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TO THE

REPORTS OF COMMITTEES

AND

MISCELLANEOUS DOCUMENTS

OF THE

SENATE OF THE UNITED STATES

FOR THE

FIRST SESSION OF THE FORTY-FIRST CONGRESS.

1869.

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OF THE

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41ST CONGRESS, 1st Session. | SENATE. | REPORT No. 1.

IN THE SENATE OF THE UNITED STATES.

MARCH 10, 1869.

Mr. ABBOTT made the following

REPORT.

[To accompany bill S. No. 42.]

The Committee on Military Affairs, to whom was referred the petition of Captain Orlando Brown, submit the following report:

That Captain Brown was an assistant quartermaster of volunteers. Under an order of Major General B. F. Butler, known as General Order No. 46, and also other orders, Captain Brown entered upon duty at Norfolk as "superintendent of negro affairs;" that his business was, as the papers before the committee show, properly conducted as within the orders which he received from his superior officers. His accounts are, however, suspended for want of authority. The only remedy is to legalize the order of General Butler, No. 46. The committee recommend the passage of the bill.

41ST CONGRESS, 1st Session. | SENATE. | REPORT No. 2.

IN THE SENATE OF THE UNITED STATES.

MARCH 11, 1869.

Mr. HOWE made the following

REPORT.

[To accompany bill S. No. 47.]

The Committee on Claims, to whom was referred the matter of S. & H. Sayles, respectfully report:

This claim is submitted to the consideration of Congress by the honorable Secretary of War, who transmits the report made to him by the board of officers he had organized to investigate claims growing out of contracts made with the War Department. Brevet Major General James A. Hardie was the president of this board, and Brevet Lieutenant Colonel George Gibson the recorder. This board seems to have investigated the facts and circumstances of this case with great care, industry, and patience, and their report is very full and elaborate. The result arrived at is, that the claim is meritorious and ought to be paid. The Secretary approves the finding of the board, and recommends the payment of the claim.

The facts in the case may be briefly stated as follows:

On the 27th of February, 1865, Colonel C. W. Moulton, depot quartermaster at Cincinnati, Ohio, advertised for proposals to furnish the quartermasters' department with sky-blue kerseys, army standard; the advertisement stating that standard samples of the articles required could be seen at the office of clothing and equipage in that city, and it was made a condition that the goods should in every respect be equal to the army standard, and that a sample of the cloth proposed to be furnished should be submitted with the bid. On the 10th of March, 1865, the bids were to be opened, and on the 11th awards were to be made. Messrs. William C. Langley & Co., of New York, acting for the claimants, submitted proposals through Messrs. West & Comingore, of Cincinnati, to furnish 250,000 yards of sky-blue kerseys, army standard, at $1 50 per yard, enclosing a sample, and agreeing to deliver 10,000 yards weekly after the first of May, then next.

On the opening of the bids, this proposal was accepted and an award made to the claimants in this case, S. & H. Sayles. The award was made verbally, and West & Comingore immediately telegraphed the fact to William C. Langley & Co., of New York, who promptly communicated it to their principals, S. & H. Sayles. One of the claimants testifies that his firm at once proceeded to purchase wool and other materials necessary to manufacture the goods; despatch being necessary, as by their proposal they were to deliver 10,000 yards weekly, after the 1st of May. Contracts (duplicates) were drawn up by Colonel Moulton, the quartermaster, to be signed by the Messrs. Sayles, and mailed at Cincinnati on the 17th of March, 1865, but erroneously directed to them at New

York city, their post-office address being Killingly, Connecticut. In consequence of this mistake, these contracts remained in the New York post office till advertised, and William C. Langley & Co. seeing the name of the Messrs. Sayles among the list of those having letters uncalled for, wrote for and obtained authority to take them out and forward them. They came to the hands of the Messrs. Sayles in the early part of April 1865.

On examining the contract, it appeared that there were certain "specifications" attached to it, which formed part of it. These "specifications" required each square inch of the cloth furnished to bear a strain of 90 pounds lengthwise, 55 pounds crosswise, and 75 pounds diagonally. The Messrs. Sayles learned now, for the first time, that their cloth was to be subjected to any such tests. No mention was made of such "specifications" in the advertisement asking for proposals, nor in the proposals.

The Messrs. Sayles had been actively at work on this contract, supposing, as they affirm, that they were to furnish goods equal to the sample submitted, for nearly three weeks, when they first saw or heard of these specifications. After making certain experiments, they became satisfied that it was practically impossible to manufacture a large quantity of cloth which would stand the required tests, and be also of the specified weight, 11 ounces per lineal yard. They were inclined to stop their work and abandon the contract, but, at the suggestion of their commission merchants, they concluded to sign it, and forward it to their agents at Cincinnati, with instructions not to deliver it unless the quartermaster would agree to waive the specifications, and accept the cloth, if equal in quality to the samples furnished as "army standard," on which the bid was made. It is proved that an order was issued by D. M. Brown, supervising inspector at Cincinnati, and approved by Colonel Moulton, dated the 11th of May, 1865, instructing the inspectors to receive all kerseys presented that were equal to the four samples on the card on which the order was written. No one of these samples would bear the strain required by the specifications. The strain they would bear varied from 57 to 79 pounds lengthwise, and from 52 to 59 pounds crosswise. The diagonal strain is not given.

The contract bears date March 11, 1865, but it was not executed or delivered until some time after. The precise date of its execution is not shown, but by a memorandum made on the envelope containing the contracts, by Colonel Moulton, it appears that they were sent from the office for execution, March 17, and returned April 30, 1865. The contract required the first delivery of cloth to be made within 30 days from the date of the award. This requisition was complied with, and a delivery of the first parcel was made and received at the government warehouse at Cincinnati on the 12th of April, 1865. It was further stipulated in the contract that the delivery of the whole was to be completed within four months from the date of the award, and as nearly as possible in equal deliveries. The cloth was to be examined and inspected without unnecessary delay, by a person or persons appointed by the United States, and goods rejected were to be removed by the contractors within six days after notice of rejection.

The manufacture of the kerseys was proceeded with, and they were forwarded to Cincinnati and delivered, or offered for delivery, according to the provisions of the contract, from time to time, from the said 12th of April, 1865, when the first delivery was made, till the 20th of July following. A portion of the cloth was received in the government warehouse, and the residue stored by the claimant's agents at Cincinnati, at the request of the officers of the government; the warehouse of the gov-

ernment being so filled with goods that there was not room to receive them.

On the 20th of July, 1865, the inspection of these cloths was commenced by Captain E. C. Blevin, assistant quartermaster, and the inspection was completed on the 16th of August after. The goods were subjected to the tests named in the "specifications," and were rejected because they failed to stand those tests. The inspection of these cloths was made in this way, in consequence of an order from the Quartermaster General, dated the 13th of July, 1865, directing that a strict compliance with the terms of all written contracts was to be insisted on, and no cloths received that were not fully up to the "specifications." From the report of Captain Blevin it appears that the claimant's cloth bore on an average a strain of 75 pounds lengthwise, 43 pounds crosswise, and 81½ pounds diagonally. The corresponding numbers in the "specifications" are 90 pounds, 55 pounds, and 75 pounds. The number of yards delivered and tendered for delivery at Cincinnati, was 105,424.

As the cloths in question were rejected solely for not standing the above tests, the committee deem it proper to examine somewhat into the history of their adoption, as well as their practicability and value, to determine the quality of cloth.

Early in the year 1864, Colonel Crossman, the depot quartermaster at Philadelphia, was directed by the quartermaster general to make experiments with a view of adopting a standard for all army cloths to be purchased for the quartermasters' department.

On the 21st of March, 1864, Colonel Crossman reported to the Quartermaster General, that after making experiments he had arrived at the following results: that one square inch of sky-blue kersey should resist a strain of 90 pounds lengthwise, 55 to 60 pounds crosswise, and 75 pounds diagonally.

It now appears that this recommendation was founded on a mistake; a mistake as to the cloth used, and a defect in the machine which tested it.

Under date of July 21, 1868, General Crossman writes thus to General Meigs:

In the early part of 1864 I made exertions to procure army cloths of the greatest possible strength consistent with propriety; and the coat cloth and sky-blue kersey delivered by Benjamin Bullock's Sons was found, on being tested by the machine, to bear a strain of over 90 pounds lengthwise, 60 pounds crosswise, and 75 to 80 pounds diagonally. These cloths were reported by the chief inspector as superior, both in appearance and strength, to the old standard, and were therefore adopted, and samples of them forwarded to you, as by my letter of the 21st of March, 1864, with the recommendation therein expressed.

Shortly afterwards * * * * I directed extensive experiments to test the strength of the best of European and American cloths, the result of which, enclosed herewith, marked B. shows that *my recommendation was a gross error*—the result of the extraordinary strength of the Bullock cloth referred to, which had been made probably for the express purpose of excelling all other competing contractors for these goods.

Under date of July 29, 1865, Colonel Crossman writes to General Meigs as follows, (after referring to his recommendation of the test in question, March 21, 1864:)

Subsequent experiments made by Chief Inspector Campbell, under my direction, with the new testing machine, *which he found varied considerably from the one first used, being more severe in its test*, resulted in proving, according to his judgment and my own, that the maximum strains at first required were too light, and he therefore recommended a reduction of them in the table of textile fabrics then in preparation for the "Manual," and I reduced them accordingly, &c.

Chief Inspector Neal Campbell, in his letter dated September 29, 1864, addressed to Colonel Crossman, after stating that he has taken samples from a number of manufacturers of kerseys and blue cloths and tested them by the machine at the arsenal, and that the kerseys bear an average

strain of about 68 pounds lengthwise, 37 pounds crosswise, and 70 pounds diagonally, then says:

In making the statement referred to in your letter to the Quartermaster General of March 21, 1864, I used a machine that was at Messrs. Lewis, Boardman & Wharton's store, *and which I now find was not correct.* I did not know of any other machine in the city but theirs, and supposing it to be correct, I made the report to you accordingly.

These facts seem to prove satisfactorily that the tests, which were made a part of the contract in question, were recommended and adopted through a mistake. The board of officers whose report is before us, in their investigation of this part of the subject, obtained from the arsenal at Philadelphia a piece of the same cloth, manufactured by Benjamin Bullock's Sons, and found that, being tested by the machine, it tore at 74⅜ pounds lengthwise, and 49⅜ pounds crosswise; and this cloth bore the greatest strain of any which the board could find in the possession of the government—a less strain lengthwise, and a trifle greater strain crosswise, than the strain borne by the cloth of the claimants.

On the 3d of May, 1865, Colonel Crossman writes General Meigs, and encloses a letter to him from Chief Inspector Campbell, recommending the establishment of certain tests for various descriptions of goods, and for kerseys of this kind, that the strain required be 75 to 85 pounds lengthwise, and 37 to 50 pounds crosswise. Colonel Crossman says:

In this opinion I fully concur, and request you will change the measures of strength in the table of textile fabrics last sent to your office accordingly.

In order to correct any errors which might be found in his table of textile fabrics for the army, and to make it as perfect as possible, General Crossman enclosed it to the National Association of Wood Manufacturers, and, by letter dated November 18, 1865, requested that body to examine the table and report to him their views respecting it. They appointed a committee, who, after full examination, wrote to General Crossman—

That the strain upon the goods indicated to us in said table is such as to render the manufacturing unnatural and extremely difficult, without any special benefit to the goods. We would, therefore, recommend the following modifications, &c.

The strain for kerseys, as it stood at that time in the table, was 75 to 85 pounds lengthwise, and 37 to 50 pounds crosswise. The modification recommended by the committee was 60 to 70 pounds lengthwise, 30 to 35 pounds crosswise. General Crossman modified and established the strain as follows: 65 pounds lengthwise, 40 pounds crosswise. The diagonal test was abandoned as not important, and this is the strain for this description of goods as now recommended for the quartermasters' Manual.

The following certificate is signed by 15 firms and individuals among the largest and most respectable manufacturers of woollen goods in the United States residing in different sections:

We, the undersigned, manufacturers of woollen goods, from experience in the manufacture of army kerseys, are of the opinion that the specifications concerning the quality and texture of three-fourths sky-blue kersey, recently put forth by Colonel Moulton, quartermaster at Cincinnati, Ohio, are almost if not absolutely impracticable.

A certificate of similar import is in evidence before the committee, signed by 23 mercantile houses of the highest respectability in the largest cities and towns of the United States engaged in the sale of woollen goods.

Captain Bliven, who, as assistant quartermaster, made the inspection of these clothes, says in his report:

I am satisfied that the specifications as they now stand are practically a failure. * * * A comparison between the respective strains of the two samples from the same piece prove the possibility of a difference of more than 10 pounds in the diagonal average strain, and of more than four and a half pounds in the average strain in the three directions, and thus show he *impossibility of producing any great quantity of goods to conform in every respect to the rigid conditions of the specifications.*

By a letter of Colonel D. H. Vinton, division quartermaster general, who had charge of the office of army clothing and equipage at New York, addressed to General Meigs and dated July 25, 1865, it appears that the "specifications" in question were never recognized in that office—contracts were made and goods inspected and accepted without reference to them. Colonel Vinton says:

I would respectfully state that in my opinion kerseys of 22 ounce weight, of double width, are not capable of sustaining the weights required by Colonel Crossman's tests, (recommending 90 pounds,) and that in order to fully come to the standard the weight of the cloth should be increased.

The board of officers whose report is referred to your committee, after witnessing various trials of the machine, and after full examination made by them personally, say:

As to the test embodied in the contract, we are not prepared to say that it is absolutely impossible to manufacture cloth in conformity to it, but we do find from the correspondence on file in the department, from the reports of officers, and from experiments made by ourselves, that it is practically impossible to attain the standard; and it has been habitually ignored by the government officers. We made a series of trials of the best samples of cloth in the possession of the government, and each sample failed to stand the test. But one sample came as near the test as the cloth of the claimants—that bore a less strain lengthwise, and a slightly greater strain crosswise.

As to the character and quality of the cloth furnished under this contract, aside from its failure to stand the tests named in the "specifications," the proof is very ample and satisfactory.

Mr. H. S. Sayles testifies, (he is one of the claimants:)

That every yard of the goods made and delivered by us under the contract was as good or better than the sample we furnished when we put in our bid.

Mr. Samuel Keyser, one of the firm of Wm. C. Langley & Co., of New York, testifies—

That they were in all respects equal if not superior to the sample on which their proposal was based.

Mr. B. D. West, of Cincinnati, says:

These kerseys were equal, if not superior, to the sample shown in the office and sealed as "army standard."

Mr. D. N. Comingore testified substantially to the same. Mr. John G. Willock, one of the government inspectors who examined these kerseys, testifies—

That he has always said, and now states, that he believes them to be of superior quality of kersey—more so than any which the department had purchased and received as army standard kerseys, and that he did not reject them because they were not good kerseys, but because they did not conform to the "specifications" referred to.

Mr. D. M. Brown, another of the government inspectors, testifies—

That he personally examined a portion of said kerseys, and that all of those which he thus examined were full "army standard," according to the rules and principles which had been applied in the examination of kerseys in said department.

Captain Bliven, the assistant quartermaster who conducted the inspection, says, in his report:

They were rejected by the inspectors as not being equal in all respects to the specifications. * * * But I have to add that their unanimous opinion was, that the kerseys were superior to any ever before delivered at this depot.

The board of officers, in their report on this subject, say:

We find the cloth of the claimants to have been of good quality and well manufactured; as good as the best furnished to the government during the war of which we have any knowledge; and in every respect, save the test in question, fully up to the requirements of the contract.

The cloth manufactured and delivered, or offered for delivery, to the gov ernment on this contract was, as before stated, 105,424 yards. This was sold during the spring and autumn of 1866, in parcels, after advising,

as it is said, with the honorable E. M. Stanton, then at the head of the War Department, who agreed that the sale, if a sale was thought expedient, should work no prejudice to the claim.

The cloths were sold in four different periods between the 14th of April, 1866, and the 30th of November following, and realized the sum of $69,447 85; the difference being $88,688 15.

And now the practical question upon these facts is, shall the claimants be left to bear the loss they have sustained, or shall they be compensated for it by the government? The board of officers say, in their report:

> We find that the claimants entered into this contract in good faith, with the design and purpose to carry it out honestly and fairly; that that design and purpose were by them fully accomplished in every respect save one—a technical conflict with a requirement of the contract in regard to the strain the cloth manufactured should bear; a literal compliance with which requirement the board find it was practically impossible to accomplish.

The committee adopt these views, and can see no just grounds on which the payment of this claim can be resisted. The test in question seems to have been recommended and adopted through mistake. No attention was paid to it, so far as the committee can learn, at any other depot of the government except at Cincinnati, and however we may regard the claim of the express waiver of the "specifications" at the time of the delivery of the contract, as insisted on by the claimants, we find that there was no attempt to apply those tests to any of the various parcels of cloth delivered, some of which were taken into the government warehouse, until more than four months after the date of the contract. That period, four months, was the time limited for its full performance, and this neglect to inspect was in direct violation, on the part of the government, of the stipulation in the contract, that "the articles, upon being delivered, shall be examined and inspected without unnecessary delay by a person or persons appointed by the United States."

That the cloth was really of the best quality is fully proved. Your committee report the accompaning bill and recommend its passage.

41ST CONGRESS, 1st Session. | SENATE. | REPORT. No. 3.

IN THE SENATE OF THE UNITED STATES.

MARCH 22, 1869.

Mr. WILLIAMS made the following

REPORT.

[To accompany bill S. No. 94.]

The Committee on Public Lands, to whom was referred a bill entitled "A bill to amend an act entitled 'An act granting lands to aid in the construction of a railroad and telegraph line from the Central Pacific railroad in California to Portland in Oregon,' approved July 25, 1866," respectfully report:

That on the 25th day of July, 1866, Congress passed an act granting lands to aid in the construction of a railroad and telegraph line through the State of Oregon, in which it is provided that the lands shall go "to such company organized under the laws of Oregon as the legislature of said State shall hereafter designate."

On the 10th of October, 1866, the legislature of Oregon adopted the following house joint resolution:

Whereas the Congress of the United States at its last session passed an act granting land to aid in the construction of a railroad and telegraph from the Central Pacific railroad in California, to Portland, Oregon, and made it the duty of the legislative assembly of the State of Oregon to designate the company organized under the laws of Oregon, which shall receive that part of said land grant lying within the State of Oregon: Therefore,

Be it resolved by the house, (the senate concurring) That the Oregon Central Rai'road Company, a company organized under the general incorporation law of Oregon, be, and the same is hereby, designated as the company which shall be entitled to receive the land granted, and all the benefits of an act of Congress, approved July 25, 1866, entitled "An act granting land to aid in the construction of a railroad and telegraph from the Central Pacific railroad in California to Portland, Oregon," so far as said land grant applies to the State of Oregon.

On the 20th of October, A. D. 1868, the legislature of the State adopted the following senate joint resolution:

Whereas the Congress of the United States, by an act approved July 25, 1866. entitled "An act to aid in the construction of a railroad and telegraph from the Central Pacific railroad to Portland, in Oregon," did grant certain lands in the State of Oregon, and confer certain benefits and privileges upon such company organized under the laws of Oregon as the legislature of such State should thereafter designate;

And whereas the legislative assembly of Oregon, at its fourth regular session, did adopt a joint resolution known as house joint resolution No. 13, designating in terms the Oregon Central Railroad Company as the company entitled to receive the land granted by, and all the benefits and privileges of the said act of Congress;

And whereas at the time of the adoption of the said joint resolution, as aforesaid, no such company as the Oregon Central Railroad Company was organized or in existence, and the said joint resolution was adopted under a misapprehension of facts as to the organization and existence of such a company;

And whereas the designation of the company to receive the lands in the State of Oregon granted, and the benefits and privileges conferred by the said act of Congress, yet remains to be made: Therefore,

Be it resolved by the senate, (the house concurring,) That the Oregon Central Railroad Company, a corporation organized at Salem on the twenty-second day of April, in the year one thousand eight hundred and sixty-seven, under and pursuant to the laws of the State of Oregon, be and the same is hereby designated as the company entitled to receive the lands in Oregon, and the benefits and privileges conferred by said act of Congress.

Different railroad companies are described in these resolutions, though both are designated by the same name.

One, the company described in the first resolution, is a railroad company whose articles of incorporation were filed on the 21st of November, 1866, and whose line of road is located on the west side of the Willamette river, and may, therefore, for convenience be denominated the "West Side Company."

The company described in the second resolution is one whose articles of incorporation were filed on the 22d day of April, 1867, and whose line of road is located on the east side of the Willamette river, and may, therefore, be denominated the "East Side Company."

Both of these companies are contending for the grant.

Section six of the said act of Congress provides that the company designated by the legislature shall file its assent to the grant within one year from the passage of the act.

The West Side Company filed its assent within the required time; and if it was designated according to the act of Congress, there seems to be no necessity for any further legislation upon the subject.

Bearing upon this point, however, is a correspondence, of which the following is a copy:

SENATE CHAMBER, WASHINGTON, *January* 19, 1869.

SIR: I respectfully invite your attention to section 1 of an act entitled "An act granting lands to aid in the construction of a railroad and telegraph line from the Central Pacific railroad in California to Portland in Oregon, approved July 25, 1866," providing for the disposition of the lands granted by said act in the State of Oregon.

Enclosed please find a pamphlet entitled "statement of facts," which fully sets forth the rights and claims of a company designated by the legislature of said State in October, A. D. 1868, commonly called the "East Side Company."

Enclosed also please find a paper, signed by nine members of the Oregon senate, protesting against the action of said legislature in October, A. D. 1868, in which the rights and claims of a company designated in October, 1866, commonly called the "West Side Company," are fully stated.

I have nothing to say as to the rights or claims of either company, but in view of the fact that the articles of incorporation of the West Side Company were not filed in the office of the secretary of state until after its designation by the legislature in 1866, and in view also of the fact that the East Side Company cannot file its assent as required by the sixth section of said act, I am apprehensive that the benefits of said act will be wholly lost to the State, unless something is done to prevent it. Will you be good enough to advise me if there is anything in the action of your department, or the views you entertain of this matter, making unnecessary the proposed legislation?

Yours truly,

GEO. H. WILLIAMS.

Hon. O. H. BROWNING,
Secretary Interior, Washington, D. C.

DEPARTMENT OF THE INTERIOR,
Washington, D. C., January 20, 1869.

SIR: I have received your letter of the 19th instant and the accompanying copy of Senate bill 776, to amend "An act granting lands to aid in the construction of a railroad and telegraph line from the Central Pacific railroad in California to Portland in Oregon, approved July 25, 1866," with other papers relating to the subject.

Said act of 1866 required the legislature of Oregon to designate a company, organized under the laws of the State, to locate and construct so much of said road as was in Oregon, and that the company so designated should file its "assent" to the act of Congress within one year after its passage.

By a resolution adopted by the legislature October 10, 1866, the Oregon Central Railroad Company was designated to locate and construct said road in Oregon. Two companies called the "Oregon Central Railroad Company" claim to have been so designated. These, it appears, are locally called the "East Side Company" and the "West Side Company."

At the date of the adoption of said resolution by the legislature, neither company had been organized as required by the laws of Oregon. The West Side Company, however, filed its assent in this department within the year.

By a resolution adopted by the legislature in October, 1868, the East Side Company was designated. The purpose of the bill, as understood, is to authorize this company to file its

"assent," without prejudice to the rights or interests of the other company, and you ask for an expression of my views as to whether there is any necessity for the proposed legislation.

In reply, I have the honor to state that, as the matter now stands, *the grant, so far as the portion of road in Oregon is concerned, has lapsed*, while the grant for that portion of the road situate in California is still in force, and some legislation by Congress is necessary to revive the grant for the Oregon portion of the road.

The proposed bill, if it becomes a law, will in my opinion accomplish that purpose.

On the 13th instant, I declined to act upon maps filed by the West Side Company, "in the absence of a judicial decision as to the rights of the claimants, or some action by Congress upon the subject." I enclose a copy of said letter.

The papers which accompanied your letter are herewith returned.

I am, sir, very respectfully, your obedient servant.

O. H. BROWNING, *Secretary.*

Hon. GEORGE H. WILLIAMS,
United States Senate.

DEPARTMENT OF THE INTERIOR,
Washington, D. C., January 13, 1869.

SIR: I have received your letter of the 11th instant, asking that certain maps, filed by J. Gaston, esq., under the act approved July 25, 1866, as showing the location of the railroad from Portland, in Oregon, to the northern line of the State of California, may be accepted by this department.

In reply, I have to state that, as there are two companies of the same name claiming, under the laws of the State of Oregon, the benefit of the grant made by said act of 1866, I must decline, in the absence of a judicial decision as to the rights of the claimants, or some action by Congress upon the subject, to comply with your request.

Very respectfully, your obedient servant,

O. H. BROWNING, *Secretary.*

S. G. REED, Esq.,
Care Hon. H. W. Corbett, *United States Senate.*

Looking at the above decision of the Secretary of the Interior, and the action of the Oregon legislature in 1868, taken upon evidence submitted and arguments made by the respective companies, it is evident that the State of Oregon is in great danger, at least, of losing the grant altogether, without some legislation in effect reviving it.

Congress ought not to decide between the two companies, because the questions involved are judicial in their nature, and the object of the accompanying bill is to provide so that both companies may have a standing in the courts of Oregon, and there have their legal rights and equities fully examined and adjudicated.

To declare by act of Congress that the East Side Company shall have the grant would be unfair, for it may turn out upon investigation before the courts that the West Side Company was legally designated in 1866, in which event that company, for aught that can now be seen, would be entitled to the land.

To declare by act of Congress that the West Side Company shall have the grant would be equally unfair, for it appears that the East Side Company was organized and made large expenditures upon the ground that the other company was never legally designated, and it ought to have the benefits and advantages of the law in accordance with which it was organized and invested its money.

It has been suggested that the proposed legislation is unfavorable to the West Side Company, but the bill has been framed so as to obviate that objection as far as practicable.

If the West Side Company was legally designated in 1866, and it has since done what the act of Congress requires, it has a vested right to the grant, which the bill, if it becomes a law, will not and cannot disturb; but it is unreasonable to insist that because that company has failed to secure the grant, the State ought therefore to lose it.

Both companies claim, and it may be that both have been designated by the legislature, and if both are allowed to file their assent, as required

by the sixth section of the act of Congress, it is made certain not only that one of the companies will get the grant, but that it will be used for railroad purposes, in which the State has more interest than in the fortunes of either company.

Reciprocal charges of fraud and irregularity in the formation of the companies have been made, but your committee propose to refer these, with all questions growing out of the legal rights and equities of the parties, to the courts of Oregon, and the accompanying bill, the passage of which they recommend, is only intended to protect the interests of the State and provide for a judicial settlement of the controversy between the two companies.

41ST CONGRESS, 1st Session. | SENATE. | REPORT No. 4.

IN THE SENATE OF THE UNITED STATES.

APRIL 1, 1869.

Mr. SUMNER made the following

REPORT.

[To accompany bill S. No. 232.]

The Committee on Foreign Relations, to whom was referred the memorial of the European and North American Railway Company, praying aid in the construction of a railroad from Bangor, Maine, to the eastern boundary of that State, have had the same under consideration, and ask leave to submit the following report:

The nature of the enterprise in whose behalf the aid of the government is asked, and the considerations of national importance which, in the opinion of your committee, entitle its projectors to the assistance they require, are set forth in the memorial which forms the subject of this report, and is appended to it. The prayer of the petitioners is two-fold: as assignees of Maine and Massachusetts they ask that the sums due to these States from the general government on all claims which accrued prior to 1860 be allowed and paid; and they pray also for such subsidies as Congress has been used to grant in aid of similar enterprises in other parts of the country. It is the purpose of the present report, however, only to examine that portion of the subject which concerns the claim made by Maine and Massachusetts for interest on their advances during the war of 1812. The sums due them on this account are claimed by the petitioners as their right. The subsidies are asked on a different ground.

In the consideration of this subject it will be necessary, first, to state the nature of the claim and give the history of its prosecution, and then to answer the various objections which, in the course of protracted discussions have been made to its payment.

During the war of 1812—'15 with Great Britain, Massachusetts advanced for the use of the United States $657,924 74, as allowed after examination at the War Department and as paid by appropriations in 1830 and 1859. By the articles of separation between Massachusetts and Maine, in 1820, the claim for these advances was divided between the two States in the proportion of two-thirds to Massachusetts and one-third to Maine, and both States have recently assigned their unpaid claim for interest to the European and North American Railway Company, the present petitioners.

The justice of the claim has been acknowledged and the principal of the debt paid. The States now claim interest on the ground that it has been the uniform practice of the government to pay interest to the States upon their advances for war purposes.

This was done in respect to advances for the revolutionary war

by the acts of Congress of August 5, 1790, and of May 31, 1794. By these acts interest was allowed to the States, whether they had advanced money on hand in their treasuries or obtained by loans.

In respect to the advances* of States during the war of 1812—'15, a more restricted rule was adopted, viz: That States should be allowed interest only so far as they had themselves paid it by borrowing, or had lost it by the sale of interest-bearing funds.

Interest, according to this rule, has been paid to all the States, which made advances during the war of 1812–'15, with the exception of Massachusetts. Here are the cases:

Virginia, United States Statutes at Large, vol. 4, page 132.
Maryland, United States Statutes at Large, vol. 4, page 161.
Delaware, United States Statutes at Large, vol. 4, page 175.
New York, United States Statutes at Large, vol. 4, page 192.
Pennsylvania, United States Statutes at Large, vol. 4, page 241.
South Carolina, United States Statutes at Large, vol. 4, page 499.

In Indian and other wars the same rule has been observed, as in the following cases:

Alabama, United States Statutes at Large, vol. 9, page 344.
Georgia, United States Statutes at Large, vol. 9, page 626.
Washington Territory, United States Statutes at Large, vol. 11, page 429.
New Hampshire, United States Statutes at Large, vol. 10, page 1.

During the Mexican war (see Statutes at Large, vol. 9, page 236) a general provision was made in the following language:

> That in expending moneys under this act and the resolution which it amends, it shall be lawful to pay interest, at the rate of six per centum per annum, on all sums advanced by States, corporations, or individuals in all cases where the State, corporation, or individual paid or lost interest, or is liable to pay it.

All that is asked now is the application of this well-established rule in favor of Massachusetts.

HISTORY OF THE CLAIM.

It is familiarly known that Massachusetts was not in accord with the administration of the United States during the war of 1812–'15. The political passions of that day, connected with the great events then occurring in Europe and with the commercial interests in this country, which were ruined by the war, were strong and unreasonable. Massachusetts was charged with want of alacrity in the discharge of her national duties, and a portion of her people were even accused of secret sympathy with the enemy. The State, on the other hand, complained that she was neglected by the nation and left a helpless prey to the expeditions of the enemy sallying forth from the military and naval station of Halifax, and that while a large part of her territory was long occupied by British troops, her whole coast constantly menaced by their ships, and her towns ravaged, burnt, or subjected to military contributions, the national arm was not efficiently extended for her protection. Smarting under these grievances, real or imaginary, and stimulated by the party spirit so violent at that time, her governor, in the early part of the war, set up the pretension that her militia, when called into the service, could not be treated as United States troops and be placed under the orders of United States officers without his consent. To that pretension the national government did not assent, as it never can assent.

* By the term "advances" is not meant money furnished to the government by the States, but money expended by them for purposes of national defence, the expenses of which it is the duty of the national government to bear.

As the war proceeded the governor of Massachusetts is understood to have abandoned his original pretention and to have objected to the incorporation of the militia with United States troops, chiefly upon the ground of practical inconvenience. When, however, the question of indemnifying Massachusetts for her military expenditures became the subject of discussion, the position was taken that the national government could not pay the charges of troops not fully under the orders of the President, who is, by the Constitution of the United States, the commander-in-chief of all the national forces. The good sense of Massachusetts has long since acquiesced in this view, but this objection could at most affect a portion only of her claims. Many of her troops had been put into the field on the direct requisition of the President or of United States officers; others, after being called out by the State, had been recognized by, or had acted under, the national authorities, and still others had been hastily summoned to repel actual or threatened invasion. No one questioned, in the congressional discussions which immediately followed the war, that Massachusetts had large and just claims. The liability of the national government was denied only in the cases affected by the pretension of her governor, heretofore alluded to. Nothing else was put in controversy, although Congress, in the years following the war, was under the control of the party to whom the attitude of Massachusetts during that struggle had been in some respects obnoxious. Favorable reports upon the claims of that State for military advances were made to the House, by a select committee, during the 15th Congress, and by the Committee on Military Affairs during the 18th Congress. These reports were not acted upon. During the 19th Congress, the Committee on Military Affairs made another favorable report, accompanied by a bill to provide for the examination and payment of these claims, on which the House acted, December 15, 1826, by adopting the following resolution:

Resolved, That the Committee of the Whole House be discharged from the further consideration of the bill to authorize the settlement and payment of the claim of the State of Massachusetts for certain services rendered during the late war; that the same, with the claim of Massachusetts for military services, be referred to the Secretary of War, and that he be instructed to report to this house what claim, and what amount of said claim, may be allowed and paid, upon the principles and rules which have been applied to the adjustment of claims of other States, for military services during the late war, *and to which the assumed authority of the governor of that State to control the militia and to judge of the necessity of ordering them into service, does not apply*; and also, if any parts of said claim are disallowed, to state the reasons for which the same are rejected.

This resolution of the House, vindicating the authority and dignity of the government, and at the same time doing justice to Massachusetts, is the basis of all the action which has been had in respect to the advances of that State in 1812–'15. Nothing has been allowed, which is affected by "*the assumed authority of the governor of that State to control the militia, and to judge of the necessity of ordering them into service.*"

In obedience to this resolution, the Secretary of War directed an examination by the Third Auditor, and during the 2d session of the 20th Congress (Ex. Doc. No. 3) he reported that the claims of Massachusetts, as presented, amounted to $843,349 60, of which he had allowed $430,748 26.

The payment of this sum was provided for by act of Congress of May 31, 1830, (U. S. Statutes, vol. 4, page 428,) as follows:

That the proper accounting officers of the treasury, under the superintendence of the Secretary of War, be, and they are hereby, authorized and directed to audit and settle the claims of the State of Massachusetts against the United States for the services of her militia during the late war, in the following cases: First, where the militia of the said State were called out to repel actual invasion: *Provided*, Their numbers were not in undue proportion to the exigency. Second, where they were called out by the authority of the State, and after-

wards recognized by the federal government. And, thirdly, where they were called out by, and served under, the requisition of the President of the United States, or of any officer thereof.

SEC. 2. *And be it further enacted*, That the sum of $430,748 26, if so much be necessary, be applied to the foregoing purposes out of any money in the treasury not otherwise appropriated.

It is noticeable that while this act of Congress of May 31, 1830, appropriates the exact sum reported as due by the War Department, under the House resolution of December 15, 1826, it does not, in terms, refer either to that resolution or to the report. What this act of Congress does, is, by a most careful and cautious enumeration of the cases in which payment may be made, to render effectual, beyond any possibility of mistake, the decision of the House contained in the resolution of December 15, 1826, that no payment should be made in cases affected by an unwarranted pretension of the governor of Massachusetts.

Upon examination at the War Department, all the items making up the $430,748 26 were found to be within the rules of the act of May 31, 1830, and thereupon that sum was paid.

Subsequently the House of Representatives, on the 24th of February, 1832, adopted the following resolution:

Resolved, That the Secretary of War is hereby instructed to examine the claim of the State of Massachusetts for disbursements for military purposes during the late war, according to the rules or cases set forth in an act of Congress providing for the settlement of said claim, approved the 31st day of May, 1830; and if any further sum shall be found due to the claimant by such examination, to report the same to the House.

And on the 14th of May, 1836, Congress adopted the following joint resolution (U. S. Statutes at Large, vol. 5, p. 132:)

A resolution to authorize the Secretary of War to receive additional evidence in support of the claims of Massachusetts and other States of the United States, for disbursements, services, &c., during the late war.

Resolved, That the Secretary of War, in preparing his report pursuant to a resolve of the House of Representatives, agreed to on the 24th of February, 1832, be, and he hereby is, authorized, without regard to existing rules and requirements, to receive such evidence as is on file, and any further proofs which may be offered tending to establish the validity of the claims of Massachusetts upon the United States, or any part thereof, for services, disbursements, and expenditures during the late war with Great Britain; and in all cases where such evidence shall in his judgment, prove the truth of the items of claim, or any part thereof, to act on the same in like manner as if the proof consisted of such vouchers and evidence, as is required by existing rules and regulations touching the allowance of such claims; and that in the settlement of claims of other States upon the United States for services, disbursements, and expenditures during the late war with Great Britain, the same kind of evidence, vouchers, and proof shall be received, as is herein provided for in relation to the claim of Massachusetts, the validity of which shall be, in like manner, determined and acted upon by the Secretary of War.

Neither the House resolution of February 24, 1832, nor the joint resolution of May 14, 1836, repeals or modifies the rules of limitation established by the act of May 31, 1830. On the contrary, the first expressly requires that those rules shall continue to be observed; and the second merely changes the rules of evidence so as to admit any satisfactory proofs instead of requiring vouchers technically conformable to the usages of the War Department; and it makes this liberal enlargement applicable to all the States alike. The Secretary, although authorized to accept as *proof* anything satisfactory to his judgment, was still bound to allow the claims of Massachusetts only in the following cases:

First. Where the militia of the said State were called out to repel actual invasion, *provided* their numbers were not in undue proportion to the exigency. Second. Where they were called out by the authority of the State and afterwards recognized by the federal government; and thirdly, where they were called out by, and served under, the requisition of the President of the United States, or of any officer thereof.

Acting under this resolution of May 14, 1836, and under the rules of limitation prescribed in the act of May 31, 1830, the Secretary of War

(Mr. Poinsett, of South Carolina) reported, in 1837, (Ex. Doc. No. 45, 2d session 25th Congress,) that there was due to Massachusetts the further sum of $227,176 48. In the years immediately following Mr. Poinsett's examination the Senate voted the sum reported by him on general appropriation bills, and by separate bills, but the House either non-concurred by small majorities or failed to act. Finally, on the 3d of March, 1859, Congress made the required appropriation; and so, with the appropriation made in 1830, Massachusetts obtained in all, after a delay of nearly half a century, $657,924 74 upon her claim of $843,349 60. She obtained it after every item objectionable in point of principle had been eliminated by the resolution of December 15, 1826, and by the act of May 31, 1830. She obtained it after every item objectionable in point of fact had been exposed to the unsparing criticism of her political opponents. She obtained it after every item objectionable in point of proof had been subjected to the protracted and rigorous examination of officials from a section of the country where ill'will to her was, until recently, fixed and hereditary. She obtained nothing except what was extorted from overbearing and adverse political majorities; and the final appropriation was voted in a Senate where she had few friends, without dissent, and with a general expression of surprise and shame that the rights of a State had been so long denied.

From this sketch it appears that the government has acknowledged the validity of the Massachusetts claim, and has paid the principal of its debt. The only question which can remain is, whether there is any consideration which ought to relieve us from paying interest upon this debt, as we have done in the case of every other State which made advances during the same war.

This payment is sometimes resisted on the ground that the services of Massachusetts during that war were not such as to entitle her to any consideration from the general government. In the opinion of your committee this is no longer an open question. The proper tribunal, the Congress of the United States, has finally decided it.

The original justice and validity of the claim which Massachusetts makes after it had been settled by such adjudication, can never again be the subject of legitimate controversy. Some reply, however, may be proper to recent suggestions which are likely to create an injurious prejudice in the minds of those not familiar with the history of the last war with England.

PATRIOTIC CHARACTER OF THE ADVANCES OF MASSACHUSETTS IN 1812–'15.

The coasts of Massachusetts and Maine, as was to be expected from their proximity to the British naval and military station at Halifax, were vexed by the enemy's cruisers during the whole contest, and they received protection from only a handful of United States troops, as our principal efforts were made elsewhere, especially upon our northern frontier. But the storm of war did not burst upon them in its full fury until 1814, after the downfall of Napoleon, when early in September a great naval expedition took possession of Castine, and after sweeping the Penobscot bay and river, and capturing Belfast, Hampden, and Bangor, sailed westward, hanging like a cloud over the flourishing towns of Wiscasset, Bath, and Portland, and menacing Boston and Charlestown. General Henry Dearborn, the United States major general in charge of the military district which embraced Massachusetts and Maine, and Commodore Wm. Bainbridge, who commanded our naval station at Charlestown, called upon the authorities of Massachusetts at

once for aid. Addressing himself to the adjutant general of Massachusetts on the 5th of September, General Dearborn said:

The movements and force of the enemy on our eastern coast appearing to require a considerable additional defence or force, I have deemed it my duty to request his excellency the governor of this State, as well as the governor of New Hampshire, to order out from the two States 5,200 infantry and 550 artillery; from this State the infantry amount to upwards of 4,200 and 450 artillery, exclusive of officers, non-commissioned officers and musicians.

And again on the next day he said:

Will you permit me to suggest to you the propriety of your proposing to his excellency, the expediency of having orders issued for placing the whole of the militia within 20 or 30 miles of the sea-shore on the alert, and in perfect readiness for marching on the shortest notice.

Addressing the same authority, on the 5th of September, Commodore Bainbridge said:

As I feel extremely anxious in these perilous times, when our country is menaced, both north and south, by a powerful enemy, to know what security can be calculated upon in this part of our country, I am induced to ask the favor of you to communicate to me, as far as is consistent with your official duty and the propriety of my request, the measures that are adopted by the commander-in-chief of this Commonwealth for the defence of this post and the vicinity. * * * * I respectfully suggest the immediate embodying and drilling a respectable force of the militia, to be stationed in different quarters in the vicinity of Boston; to place videttes to prevent the possibility of surprise: batteries on Dorchester heights and Noddle's island, and breast-works thrown up on North Battery wharf. These precautions would in all probability prevent an attack, and if it did not, would enable us to make an honorable resistance Allow me, my dear general, to say, that if the militia is not embodied in the field, I should much fear the work of destruction would be over before they could rendezvous, or oppose; for four or six hours would be all the time the enemy would require.

The works of defence recommended by Commodore Bainbridge were promptly erected, and the militia called for by General Dearborn were at once ordered into the field, as every previous request from the same officers had been complied with. In April, 1814, Commodore Bainbridge called the militia, and met with such a response that upon his report of the facts the Secretary of the Navy, in a letter dated April 27, took pleasure in saying that "*these proofs of zeal and alacrity to repel meditated attacks of the enemy are extremely gratifying.*"

On the 13th of June the commodore called again for militia to re-enforce the navy yard, and to guard the approaches by Chelsea bridge, and the call was answered with gratifying promptness. In July, 1814, General Dearborn called for 1,100 militia, which were furnished at once, and placed under the command of United States officers.

In reference to the militia called out at General Dearborn's request, of September 5, the governor of Massachusetts, in a letter written on the 7th to the Secretary of War, said:

A few weeks since, agreeably to the request of General Dearborn, I detached 1,100 militia for three months for the defence of our sea-coast, and placed them under his command as superintendent of this military district; but such objections and inconveniences have arisen from that measure that it cannot now be repeated. The militia called out on this occasion will be placed under the immediate command of a major general of the militia.

This language was the subject of much discussion during the following years in Congress. One side contended that it showed a persistence in the claim made in the summer of 1812, that the governor had a constitutional right to withhold the militia from the command of United States officers. The other, that he had waived that claim by placing militia under General Dearborn's command in July, 1814; that his refusal to do so in September was not founded upon legal or constitutional pretensions of any kind, but upon practical "*objections and inconveniences;*" that these had really existed, and that some were very serious, such as the repugnance of the militiamen to serve except under their own officers; and that, although he did not nominally put the militia under the control of United States officers, he brought about a concert of action with

them by various practical measures, as, for example, by appointing General Dearborn's son to command the militia at Boston as brigadier general. The last views finally prevailed, in connection with a formal renunciation, at a subsequent period, by both the governor and legislature of Massachusetts, of the constitutional pretension made in 1812. Mr. Monroe, who, as Secretary of War, in a correspondence with the governor had controverted that pretension, as President of the United States sent a special message to Congress, on the 23d of February, 1824, in which he said:

It affords me great pleasure to state that the present executive of Massachusetts has disclaimed the principle which was maintained by the former executive, and that in this disclaimer both branches of the legislature have concurred. By this renunciation the State is placed on the same ground, in this respect, with the other States. * * * There never was a moment when the confidence of the government in the great body of our fellow-citizens of that State was impaired, nor is a doubt entertained that they were, at all times, willing and ready to support their rights, and repel an invasion by the enemy. * * *Essential service was rendered in the late war by the militia of Massachusetts, and with the most patriotic motives.* It seems just, therefore, that they should be compensated for such services in like manner with the militia of other States. The constitutional difficulty did not originate with them and has never been removed. It comports with our system to look to the service rendered and to the intention with which it was rendered, and to award the compensation accordingly, especially as it may now be done without a sacrifice of principle. * * I therefore consider it my duty to recommend it to Congress to make provision for the settlement of the claim of Massachusetts for services rendered in the late war by the militia of the State, in conformity with the rules which have governed in the settlement of the claims for services rendered by the militia of the other States.

Of the $430,748 26 allowed to Massachusetts on the first examination of her claim, $227,662 03 was allowed for the militia called out by the governor in response to General Dearborn's letter of September 5, 1814. Of the remainder, $196,730 11 was allowed for militia called into service, not by the governor, but by officers of the militia acting under his authority.

On the 3d of July, 1812, the governor directed the militia to act "*without waiting for orders, in case of actual invasion, or of such imminent danger thereof as will not admit of delay.*" And on the 16th of June, 1814, the adjutant general of the State addressed the following order to several major generals of militia on the seaboard:

The constant alarm excited and kept up by the predatory course of warfare lately adopted on our seaboard, renders it necessary that guards should be kept up at some of the places, those, particularly, exposed by having large quantities of shipping lying therein. To facilitate the execution of such a purpose, and to render the necessary aid as prompt and efficacious as possible, his excellency the commander-in-chief directs me to signify it to you as his pleasure that you furnish to every town whose situation, from the present pressure of the war, is exposed to surprise and immediate danger, such military force, and more especially such guards by night, as its peculiar situation and circumstances require.

In apparent ignorance of this order, or perhaps forgetting it, General Dearborn, in a letter to the adjutant general, dated August 12 of that year, said:

The citizens of the towns of Duxbury and Cohasset are very desirous of having some small force stationed for the defence of their respective villages and vessels, and it is probable that similar applications will be made from other places on the sea-coast. If practicable, it would be very desirable to have such small detachments turned out from the immediate vicinity of the several places respectively, without the formality of troubling his excellency the governor on every such occasion. * * * * The movements of the enemy and his measures from time to time must, in a considerable degree, determine what shall be proper or necessary to be done on our part; hence the convenience of having small detachments from the militia made in the most prompt and convenient manner.

We have seen that these suggestions had already been anticipated by the authorities of Massachusetts.

Thus far such official papers only have been referred to as serve to show what demands the national government made on Massachusetts,

and how they were met. It remains to give some historical details, which may present more clearly than a general statement the nature of the emergency and the character of the services rendered by the State.

In January, 1814, the British brig Nimrod anchored off the wharf in Barnstable, demanded the field-pieces and other property there, and threatened, in case of refusal, to fire upon the town. In March, Falmouth was bombarded. June 11, barges from two British ships of war entered Scituate harbor, burnt several vessels, and carried off others. On the 17th of the same month a British ship-of-war, two brigs, and several small craft came to anchor near Scituate harbor, and on the 9th of July a contribution of provisions, demanded of Scituate by the British ship Nymph, was resisted by the militia. In June, again, barges from the enemy's ships appeared at the entrance of Cohasset harbor, and burnt a coasting sloop. There being a large amount of shipping at the wharves, the militia were called out to prevent further losses, and on the 13th of the same month the enemy came into Wareham, set fire to a factory, and burnt several vessels. From Rochester, on the 19th, Captain Loring reports that "the British ships are almost all the time in the Vineyard Sound. The Nimrod has appeared in our harbor, destroyed Wareham, and threatens destruction to this place." In the same month the inhabitants of Lynn called for a guard to assist in their protection against "attacks from the enemy's boats." Again, on the 13th, the inhabitants of Gloucester represent that "the enemy have already begun, even within our harbors and creeks, to burn, sink, and destroy the few coasting vessels which remain to us; and the barges from the enemy's ships in our bay, on this morning, entered one of our harbors, landed on our wharves, burnt several vessels, and carried off others, before the inhabitants could assemble to repel them." On the 21st nine of the enemy's barges, with 400 men, appeared in the harbor of New Bedford. The property exposed, besides the town, was 50 ships and brigs, "with a great number of small vessels." The whole United States force consisted of 43 men and boys. The militia were called out. The enemy continued off the harbor for a month, making an attack in July at Westport harbor, which was repulsed.

The greater part of these attacks, actual or threatened, were made within the fifth militia district of Massachusetts. In a letter to the Secretary of War, December 22, 1822, President Monroe said:

> I have examined with great attention the report of the Third Auditor of Public Accounts, on the claims of the 5th division of the Massachusetts militia, for services in the late war, with the communications of the commissioners of the State on that subject. and, according to the views presented, am of the opinion that the services to which they refer were called for by the exigencies of the times, and were intended to repel, in many instances, actual invasion, and in others the troops were called on well-founded apprehensions of it.

The 5th division embraced Plymouth, New Bedford, Rochester, Scituate, Orleans, Falmouth, and Barnstable.

On the coast of Maine, in April, 1814, the British sloop-of-war Rattler entered Townsend harbor, in Booth bay, but her barges were repulsed in an attempt to land. In June and July of that year the British ship Tenedos was in the same harbor one week. Her barges were out every day attempting to land, but were beaten off in every instance. In June the enemy burnt some small vessels in St. George's river. On the 29th of that month the enemy, 300 strong, made an attack on Pemaquid Old Fort, which was defended by militia, but were repulsed with loss. In July, the enemy landed at Harpswell and took stock from the inhablitants. June 16, the British 90-gun ship Bulwark anchored off Saco and Biddeford, and sent in five boats with 160 men. with orders to burn and

destroy. They cut down a ship's frame on the stocks, burnt three vessels, carried off another, and plundered the store of Thomas Cutts. Of the attempt to get possession of Kennebec river, General Wm. King, afterwards the first governor of Maine, reported from Bath, June 21, 1814, as follows:

A 74 has anchored near Seguin; they have made several attempts to land at the mouth of this river, and on the Sheepscot, but have been beat off in every instance, with the exception of a landing they effected at Fowle's Point, where they spiked a six-pounder. I have ordered four companies into the fort at Georgetown; other companies are ordered out at various points on the back river, which, together with those in this town, will amount to little short of 600.

General King estimated the shipping which had taken refuge up the rivers he was guarding at 40,000 tons, valued at $1,000,000, which was no small sum at that period.

Eastport, on the immediate border, had been guarded by militia detachments, but was captured in July.

All those events took place in 1814, but before the great naval and military demonstration, which commenced with the capture of Castine by the British early in September, and was followed by General Dearborn's call for militia of September 5. Large bodies of them were at once thrown into Wiscasset, Bath, and Portland, from the last of which a military report, September 19, 1814, says:

Our ships and vessels are all hauled up above the bridge and are prepared to be sunk, and all valuable property is removed from the town and the houses stripped of their furniture; if the enemy should succeed in capturing the forts, they might enter the town, burn, sink, and destroy the property, but would get no prizes.

On the east the militia compelled the enemy precipitately to abandon Belfast; repulsed foraging parties at Northport, and other points on the west side of Penbscot bay; prevented the enemy from using the resources of that region, and weakened him by covering and favoring desertions from his ranks.

The visitations upon the coast of Massachusetts continued. The selectmen of Plymouth, September 13, 1814, reported:

There is a large British force in our bays, daily in sight of the town, taking and destroying even our little fishing vessels, and they have landed at Brewster, and other places in the bay; put some under heavy contributions and threatened others. River boats and barges have landed several times, one of which was sunk by the small fort at the entrance of our harbor. The inhabitants, of all ages and situations, are moving into the country with their families and effects.

September, 1814, the enemy landed at Eastham and levied a contribution of $1,200 upon the salt works there. In the same month the salt works at Brewster were subjected to a similar contribution of $4,000; September 8, the militia officer in command at Gloucester reports that the enemy had made an attack that day at Sandy bay, but that the affair finally terminated with a loss to the British of 13 prisoners, and later in the same month he reports that two barges, which attempted to land under the fire of the man-of-war Sir George Collier, were repulsed after a sharp contest. December 19, 1814, the enemy made an attack on Orleans in barges, in which they burned two vessels and carried off two, but lost two barges, one man killed, two wounded, and 11 taken prisoners.

These details justify the statements of President Monroe, that the people of Massachusetts were "*at all times ready to support their rights and repel an invasion by the enemy,*" and that "*essential service was rendered in the late war by the militia of Massachusetts, and with the most patriotic motives.*" Considering the exposure of her coasts it is surprising that the expenditures of Massachusetts for militia were so small, being $320,209 46 in what is now Maine, and $523,083 60 in Massachusetts, of which the War Department has allowed only $657,924 74. In contrast

with the expenditures of the recent war for the suppression of the rebellion these sums appear insignificant indeed.

OTHER OBJECTIONS TO PAYMENT OF INTEREST.

Two other objections are made to the payment of this interest: one, that such a course would establish a bad precedent; the other, that Massachusetts has lost her right to it, by her delay in making the claim. These arguments will now be considered briefly.

In answer to the first, it might be urged that if the claim is just, the precedent of paying it is one which our government should wish to establish. Honesty and justice are not precedents of which either governments or individuals should be afraid. It is not, however, necessary to press this argument, for the precedent has been established. Every other State which made advances during the war of 1812 has been allowed interest. The list of statutes by which these payments have been made has been given in this report. Massachusetts asks no new rule in her favor. She only seeks the application of that already fixed. She has a right to demand that Congress shall not make her a solitary exception, and deny to her, alone, what has been granted to all her sisters. As no other State remains unpaid, there is no other case to which the precedent can be applicable.

It cannot be used to justify the reopening of claims already settled, as is sometimes urged. The case of Virginia may serve to illustrate this. Her claim was adjusted by the rule then in use, and the settlement was intended and accepted as final. The language of the statute is, "the proper accounting officers of the Treasury Department * * are hereby authorized and directed to adjust and *settle* the claim of the State of Virginia." This leaves no room for doubt, and the fact that a different rule of adjustment was afterwards applied to Maryland, and is now asked for Massachusetts, will not justify any new claim from Virginia. What is true of Virginia is true of all the other States whose claims have been paid and settled, principal and interest.

It cannot affect the questions which may grow out of the recent rebellion. One instance more will not materially increase the weight of the precedent already fixed. This government is not bound to apply the rule to a new class of cases. One rule was adopted for the Revolution, another for the war of 1812. Still a third may be necessary when the claims of the States for advances during the late war come to be adjusted. It is, however, clearly the duty of the government to treat all the States alike, whatever rule they see fit to adopt, and more than this Massachusetts does not ask.

The second objection, founded upon the alleged neglect of Massachusetts in pressing her claim, will scarcely bear the test of examination.

It is said that she might have asked for interest under the act of May 14, 1836. This is a plain misapprehension. That act only related to the mode of proving claims which came within the rules and cases set out in the act of May 31, 1830, and in that act no provision for interest can be found.

It is said that her claims were finally settled by the appropriation made in 1859; that she did not then ask for interest, and that she is now foreclosed from doing so. Your committee see no evidence that there was any final settlement in 1859, and no evidence that she did not then endeavor to obtain interest. On the contrary, the journals of the Senate and House during that session of Congress show that the delegations from Massachusetts and Maine urged the passage of a measure which

would have secured the payment of interest. On the same day, the 26th of February, 1859, when the amendment to the army bill, which ordered the last payment to Massachusetts, was adopted, the Committee on Claims reported the following amendment, which was also adopted, but which was subsequently lost in the House:

That all the States which have had or shall have refunded to them by the United States moneys expended by such States for military purposes, during or since the war of 1812 with Great Britain, which have not already been allowed interest upon the moneys so expended, shall now be allowed interest, so far as they have themselves paid or lost it; said interest to be computed by the proper accounting officers of the treasury according to the provisions and principles directed to be applied to the case of Maryland, &c.

It was entirely within the discretion of the senators and representatives from Massachusetts and Maine to decide whether they would ask for interest under a general or under a special law, and thus it appears that the same Senate which directed the payment of the sum reported by Mr. Poinsett, did, on the same day and by an amendment to the same bill, establish a rule by which interest would have been paid on that sum, and also on the sum allowed to Massachusetts under the act of May 31, 1830.

So far from there having been any settlement between Massachusetts and the United States in 1859, which cuts off this claim for interest, there was no settlement of any kind whatever, not even of the claim for the principal of the State advances. Nothing is found but an appropriation to pay a particular sum, contained in a report from the War Department, of a particular date. It is the third section of the army appropriation bill, approved March 3, 1859, and reads as follows, (see United States Statutes at Large, vol. 11, page 434:)

SEC. 3. *And be it further enacted*, That for the purpose of executing a resolution approved May fourteenth, eighteen hundred and thirty-six, entitled "A resolution to authorize the Secretary of War to receive additional evidence in support of the claims of Massachusetts and other States of the United States for disbursement services, and so forth, during the late war," the Secretary of the Treasury be, and he is hereby, authorized and directed to pay to Massachusetts, out of any moneys in the treasury not otherwise appropriated, the sum of two hundred and twenty-seven thousand one hundred and seventy-six dollars and forty-eight cents, reported under said resolution to be due to said State by J. R. Poinsett, late Secretary of War, in a report dated the twenty-third of December, eighteen hundred and thirty-seven, made to the House of Representatives the twenty seventh of December, eighteen hundred and thirty-seven: *Provided*, That in lieu of payment in money, the Secretary of the Treasury may, at his discretion, issue to said State United States stock bearing an interest of five per centum per annum, and redeemable at the end of ten years, or sooner, at the pleasure of the President.

There is nothing in this language which indicates that this payment was intended as a full and final settlement of the Massachusetts claim, or that Massachusetts was bound to accept it as such. There is nothing which would render inadmissible a demand for a further examination and a further allowance. This act no more prevents such a demand than the act of May 31, 1830, prevented the subsequent examination in 1836, or the consequent payment in 1859. So far as the language goes, the claim for principal might be still unsettled. It certainly does not cut off the demand for interest.

The doctrine which prevails in some courts, between individuals, that the acceptance of the principal under certain circumstances bars any subsequent demand for interest, can have no bearing upon transactions in which this government is concerned. Settlements between individuals are made on terms of equality, remedy in the courts being open to both parties. But this government does not permit itself to be sued, and those who have claims upon it have no other alternative than to accept whatever it may determine to pay. This government may itself be bound by the acts of its own officials, and by its own appropriations,

but nobody else is concluded thereby. Certainly this is not the case unless there is a requirement that a particular sum offered shall be accepted in full payment of a claim, if accepted at all.

Nor is there anything unusual in this claim of Massachusetts for interest after the payment of her principal. She is but following the example of all her sister States, to each of whom interest was allowed by a special act after the principal had been paid. For example, in the case of Pennsylvania, the principal was paid by the act of March 3, 1817. The language here is: "For pay of the army and militia, including the sum of $300,000, *exclusive of interest*, advanced by the State of Pennsylvania, for defraying the expenses of the militia of said State during the late war, $730,000." (United States Statutes at Large, vol. III, p. 378.) The interest was paid by an act bearing date just ten years after, March 3, 1827, (United States Statutes at Large, vol. IV, p. 240,) entitled "An act authorizing the payment of *interest* to the State of Pennsylvania."

A similar statute, paying interest to New York, bears date May 22, 1826, (United States Statutes at Large, vol. IV, p. 192;) and other instances might be given to show how exactly Massachusetts is following the precedents established by States whose representatives now resist her claim.

Massachusetts was here until 1859, asking that the principal of her claim be paid, and in particular that a sum reported as due by the Secretary of War in 1837 be provided for by an appropriation. Until that was done, the time had not come to state an interest account. And when this was done there was not only no abandonment of interest, but those who then represented Massachusetts and Maine were at the very same time openly pressing a general measure which would have given them interest, and which, having been adopted by the Senate, only failed in the House by a small majority in the last hours of the 35th Congress.

At the very next session of that body, namely, on the 8th of June, 1860, the senators from Massachusetts and Maine were found pressing the same general measure, but this time with the following proviso, which bears upon the peculiarity in their case, that their advances had been made prior to the separation of the two States:

And provided, That in computing the interest upon the moneys advanced by Massachusetts in the war of 1812 with Great Britain, such moneys shall be considered after the separation of Maine from Massachusetts as having been advanced in the proportion of one-third by Maine and two-thirds by Massachusetts, and the interest accounts of said States shall be adjusted accordingly.

It is a clear mistake, therefore, to say that Massachusetts and Maine either waived their claims for interest in 1859, or are chargeable with unreasonable delay in demanding it afterwards, or that the demand was never made until it was made in the interest of a railroad company. Interest was provided for in a measure which was barely defeated in 1859, and which was again vigorously pushed in 1860. The interest was not dedicated to the construction of a railroad until 1864. It was only during the 37th Congress that Massachusetts and Maine intermitted their efforts in this behalf, and then obviously out of patriotic consideration for the disturbed condition of public affairs.

Your committee, then, after careful consideration of the whole case, are of opinion that that interest should be paid to Massachusetts and Maine, as it has been paid to all the States which made advances during the same war of 1812. The mode of computing interest presents some doubtful questions. In the adjustments with other States the rule has been that interest should only be paid to them when they have themselves paid it or lost it. This rule, first applied in the case of Virginia, received a construction in an opinion of Attorney General Wirt, which

has governed all subsequent cases. States are deemed to have lost interest when they have raised money for their advances by the sale of interest-bearing funds; and they are deemed to be paying interest when, having claims upon this government, they are at the same time paying interest upon debts of their own. If the interest account of Massachusetts and Maine is subjected to this rule, it will amount now to $767,947, according to a computation submitted to your committee, which seems to be correct. There are some considerations which seem to make it proper that the rule in this case should be construed liberally. The delay of 22 years after Mr. Poinsett's report in favor of the payment before the appropriation was made by Congress, and the fact that the whole sum is now dedicated to a work of national importance, upon which Congress may well be asked to look with favor, should dispose us to act generously. This is not a case for any narrow rule or niggard application of it. The case appeals to our sense of justice and to sentiments of patriotism. In paying an honest debt the nation will contribute to an important work by which the general welfare will be promoted.

The committee report the accompanying bill, and recommend its passage.

APPENDIX.

MEMORIAL OF THE EUROPEAN AND NORTH AMERICAN RAILWAY COMPANY.

To the Senate and House of Representatives of the United States in Congress assembled:

The European and North American Railway Company respectfully represent, that they are engaged in the work of constructing a railroad from Bangor, in the State of Maine, of the probable length of 112 miles, to the eastern boundary of said State, where it will connect with a line of railroad now nearly completed to Saint John, in New Brunswick, which is connected with Halifax, Nova Scotia, by a line of railway for the larger part actually built, and the unfinished part is under contract and to be completed during the year 1870. Your memorialists further represent that their enterprise, as authorized by charter, includes a branch of about 100 miles in length, running north from their main line to the St. John river at Grand Falls, or at the mouth of the Fish river, or at some eligible intermediate point. The importance of these works to the defence of our northern frontier, and to our commercial relations with the British provinces, and in their bearing upon the future destiny of North America, as that may be effected by the union of all the English-speaking people who inhabit it, were so elaborately set forth in a report made to the House during the 38th Congress, (see reports of that session, No. 119,) that your memorialists will only briefly refer to them.

The dominant fact in this whole case is the geographical fact that Maine, as bounded by the treaty with Great Britain of 1789, extends so far to the north as to sever the connection between Canada and the British maritime provinces except by the St. Lawrence, the navigation of which is closed by five months of winter ice. It was this fact which induced George III to insist so long that the Piscataqua, and not the St. Croix, should be the dividing line between the provinces he retained and the colonies which had established their right to exist as indepen-

dent States. It was this fact which induced the British minister at Washington, Sir C. R. Vaughan, in his despatch of July 4, 1833, to Lord Palmerston, to say that "Great Britain must contend forever for an uninterrupted communication by the usual and accustomed road between Halifax and Quebec," meaning the road through the upper valley of the St. John, which valley they were then occupying without right, under the same necessity which compelled them to hold Penobscot bay and the eastern half of Maine during the war of 1812–'15.

The Ashburton treaty of 1842 curtailed the proportions of Maine, and fixed as its northern line, instead of the highlands separating the waters of the St. Lawrence and Atlantic, the upper St. John and the St. Francis. But even after this curtailment, Maine still projects nearly one degree north of the latitude of Quebec, and Great Britain has acquired only one bank of the upper St. John, and not the whole valley. In the judgment of those who govern that country it is not safe for them to build a military railroad by the way of the upper St. John, and they have given the imperial guarantee of three millions stirling to a line of railroad from Halifax, following the north shore of New Brunswick, and by the head of the Bay of Chaleur, to the mouth of the De Loup river, to which latter point a railroad now extends from Quebec. To meet these efforts of Great Britain to secure her political and military power in America, commencing with the setting up of a pretended title to a part of Maine and ending in an expenditure of $15,000,000 to avert the consequences of their partial failure to maintain that title, the necessity devolves upon the United States of opening routes by which their strength may be brought to bear against the communication between Halifax and Quebec. The United States saw it, and met it 40 years ago by constructing a military wagon-road from Lincoln, on the Penobscot river, to Houlton, on the eastern frontier of Maine. It is now to be met by railroad, and not merely to the eastern frontier of Maine, but to its extreme northern frontier, so as to enable us to reach and strike the line of inter-provincial connection as about to be established by the head of the Bay of Chaleur. These commanding military considerations, added to the commercial value of the works undertaken by your memorialists, which connect the United States with the population of the maritime provinces, numbering now more than 1,000,000, and rapidly increasing, and which will shorten the ocean passage between New York and Liverpool one-quarter, and, added to their political bearings as tending to hasten the annexation of all the British provinces to the United States, give to them a national importance, and, as your memorialists confiently believe, will secure to them efficient national aid.

The States of Massachusetts and Maine have set apart, to be applied to these works, whatever money may be realized upon their claims against the United States arising prior to 1860, including all those claims which belong exclusively to Maine under the Ashburton treaty of 1842.

Your memorialists desire and pray that their claims may be examined and the amount due thereon allowed and paid; and that the United States will also, from their own means, give to the works of your memorialists such aids and subsidies as they have been accustomed to give to similar works of a national character in other parts of the country.

THE EUROPEAN & NORTH AMERICAN RAILWAY CO.
By GEORGE R. JEWETT, *President.*

MARCH 8, 1869.

41ST CONGRESS, 1st Session. SENATE. REPORT No. 5.

IN THE SENATE OF THE UNITED STATES.

APRIL 1, 1869.

Mr. WILLEY made the following

REPORT.

[To accompany bill S. No. 221.]

The Committee on Claims, to whom was referred a bill for the relief of the sureties of Israel T. Canby, late receiver of public moneys at Crawfordsville, Indiana, having duly considered the same, beg leave to make the following report:

This bill was before this committee at the last Congress, and was passed by the Senate, but failed to pass in the House of Representatives. This committee then made a report, which is now adopted as the report of the committee, and is as follows:

The committee have been furnished by the officers of the Treasury Department with a statement of the facts involved in this case. It is as follows:

THE UNITED STATES *vs.* ISRAEL T. CANBY,

For a default of $52,312 04 *as receiver of public moneys at Crawfordsville, Indiana.*

Canby was receiver at Crawfordsville, Montgomery county, Indiana, and as such gave two bonds. First, dated August 18, 1829, in a penalty of $30,000. Sureties: Robert Piatt, James Cochran, James H. Wallace, N. B. Palmer, Joseph Canby, David Hillis, Jeremiah Sullivan. The second bond is dated May 10, 1830, in a penalty of $30,000, with the following sureties: Samuel Milroy, John Wilson, Isaac Miller, N. B. Palmer, Robert Piatt, James Cochran, M. G. Bright.

In 1832, Canby was reported in default to the amount of $26,501 78, afterwards, in 1833, increased to $52,312 04. Distress warrants, under the act of May 15, 1820, were issued to the marshals of Indiana, Illinois, Ohio and Kentucky, in which States the principal and sureties were believed to have property. Canby absconded, and the marshal of Indiana sold his personal effects for $250. It appeared that he had conveyed to John Wilson and Samuel Milroy, two of his sureties, a large amount of real estate, and transferred to them notes, bonds, &c., to indemnify them as well as the other sureties.

On 11th March, 1833, Secretary McLane appointed Tilghman A. Howard (afterwards district attorney of Indiana) as special attorney and agent, to take charge of the whole pending and future proceedings in the case. At request of Howard, the sureties, and others, it was agreed that the imprisonment clause of the warrants should be suspended; and, after levies had been made in all the States so as to secure the lien, &c., all proceedings under the warrants should be suspended with the under-

standing that the sureties should convey and transfer the real and personal property in their hands to the United States; that Canby should also make a like conveyance, and assist in recovering the claim of the government. All which was done. The sureties and Canby conveyed to the United States the real property of Canby, and transferred the notes, &c. (See letters, reports and deeds, on file at this date.) Canby returned to Indiana and assisted the agent in recovering titles and debts, &c.

Howard continued the management of the case until the expiration of his term of office as district attorney, when (January 1, 1840) he transferred the business to his successor, John Pettit, who, on 18th September, 1841, transferred the same to his successor, Courtland Cushing, who transferred the same to his successor, D. Mace, on ——— ——.

Mr. Daniel Kelso, of New York, Switzerland county, Indiana, was also appointed to take charge of government lands in Indiana for a short time, and then the Solicitor of the Treasury seems, in despair, to have taken the management of the case into his own hands. The report of the Solicitor, November 16, 1846, says: "There is no business in this office so perplexed and confused, and which appears to have been so mismanaged, as this Canby affair."

There is no complete statement on file of the property received from Canby or from other parties, nor of the disposition of the same. No such statements were ever made. Howard made several partial reports; and Cushing, on 21st August, 1843, made a pretty full report, but states that the case was at that time in such confusion, that he could not make a full or satisfactory report.

From all the correspondence, reports, and memoranda now on file, the following appear to have been all the means of every kind to which the government looked for the satisfaction of the debt of Dr. Canby:

1. The "obligations" (notes, &c.) transferred by Canby to Wilson & Milroy, and by them to Howard, for the United States.
2. The canal lands in Indiana.
3. The Crawfordsville property of Dr. Canby.
4. The Hendricks ands, [entered by Canby in Hendricks's name.]
5. The Hillis lands, and six "other lands," [entered in same way.]
7. The Illinois lands.
8. The "tract on the Mississippi."
9. The personal effects of Canby.
10. The Attachments *vs.* Hendricks & Tipton.
11. The property of the sureties, levied on.
12. The "other claims"—proceeds of sales of store, mill, &c., and Piatt claim.

Of these in their order.

I. *As to the notes, bonds, &c., transferred to Howard.*—General Howard never made any statement of what notes, &c., were transferred by him to Wilson & Milroy, nor of the amount collected on the same. In his first report, in 1833, he says: "The bonds and notes in the hands of the securities, said to amount to $26,872 18, have been also a subject of inquiry. After having looked into them, and the solvency of the makers and obligors, I cannot state to the department that a greater amount would be realized than $17,000. This sum, I think, would be made, and, by vigilance, perhaps $4,000 or $5,000 more; but it is not certain."

Cushing, in his report, August 19, 1843, makes the only detailed statement of these notes, which he states he got principally from Dr. Canby himself, and which he acknowledges to be defective, and promises to make it more complete at some future time.

Statement (in part) of notes transferred by Wilson & Milroy to the United States, on Canby's account, placed in the hands of General Howard.

N. B. Palmer	$240 00	Paid to Howard, in 1834	$240 00
Wm. Piatt & Co.	4,000 00	Paid to Howard, in 1835	1,000 00
Jno. Garvey & Wm. P. Ramey	1,333 34	In judgment U. S. court, 1841	
Wm. P. Ramey & Jno. Garvey	233 66	In judgment U. S. court, 1841	
		Paid to Howard on these two notes.	700 00
Samuel Grimes	1,000 00	Nothing paid—insolvent.	
Jacob Argle	102 51	Paid to Howard	115 56
Wm. W. Galey	200 00	Paid to Howard	298 70
Samuel Kennaman	300 00	Paid to Howard	350 00
Y. B. Pullan	262 50	Paid to Howard on both	595 50
Y. B. & F. M. Pullan	252 24		
Wm. Mount	85 16	Paid to Howard	88 05
David Stipp	735 00	Paid Howard, in 1836 $300 00	
		P'd Pettit, May 22, 1840 100 00	400 00
Milroy & Miller	880 81	Paid Howard in 1833 $200 00	
		Paid Howard, in 1834 1,225 00	
H. B. Milroy, (about)	7,042 55	Paid Howard, in 1834 652 47	
		Paid Howard, in 1836 1,050 00	
		P'd instalments canal lands 105 43	
		P'd instalments canal lands 103 88	
		Total on both notes	3,336 78
Judg't *vs.* H. B. Milroy, May 7, 1841, U. S. circuit court, per	6,735 55	Ex. ret'd—" no property found."	
Henry Smith	60 00	Nothing known, but Canby says it was transferred.	
Ira Crane	100 00	Paid to Howard, in 1835	62 00
Peter Applegate	36 20	Cushing never knew him. Lane & Wilson have one note, but never heard of Applegate.	
Do	36 20		
Total	16,900 16	Total	7,186 59

II. *As to the canal lands.*—There were certain lands sold for the benefit of the Wabash and Erie canal under an act of the legislature of Indiana, approved January 28, 1830, upon the following terms as specified in section six of said act: "One-fourth of the purchase money, with one year's interest on the residue, to be paid in advance at time of purchase, and the residue on or before expiration of 17 years from first Monday of October (then) next, at six per cent., &c., payable annually in advance," to be forfeited if interest be not paid. Various amendatory acts were passed adding penalties. Canby purchased these lands in October, 1830, made the first payment and received certificates, which were transferred to Wilson and Milroy and by them and Canby to Howard.

In his first report Howard says, "The real quantity of the lands called 'canal lands' is 2,376 acres."

There are statements on file, obtained from the commissioner of the land office in Indiana, which show the whole amount of canal lands purchased by Canby to have been 2,950 acres, but the whole amount of canal lands conveyed by Canby to the United States (in his deed of March 31, 1835, and which deed states that they are the same as conveyed by him to his sureties) is only 985.05 acres The whole amount of canal lands sold by Howard is 1,042.12, which includes one tract of 57.04 acres not included in Canby's deed. This amount of 1,042.12 acres is all through the case treated as the whole of the Canby canal lands.

Why the other canal lands purchased by Canby were not sold or taken to pay his debt does not anywhere appear. The fact that Howard sold one of the tracts which are not included in Canby's deed makes it desirable to inquire as to the ownership and disposition of the residue.

The following is a list of all the canal lands purchased by Canby, as appears on the books of the canal commissioner:

When purchased.	No. of certificate.	Description.	Acres.	Conveyed by Solicitor.	Record.
Oct. 5, 1830	51	Fr. E. ½SE. ¼, sec. 36, T. 27, R. 1 W...	93. 41	To Richard Greene ..	Vol. 3, p. 189.
	52	Fr. W. ½ SE. ¼, sec. 36, T. 27, R. 1W...	81. 87	To Noah Kinsey.....	Vol. 3, p. 190.
	53	Fr. E. ½ SW. ¼, sec. 36, T. 27, R. 1 W..	81. 08	To Richard Greene ..	Vol. 3, p. 189.
	54	Fr. W. ½ SW. ¼, sec. 36, T. 27, R. 1 W.	7½. 11	To John W. Wright..	Vol. 3, p. 188.
Oct. 11, 1830	381	Fr. NE. ¼ sec. 32, T. 27, R. 4 E	53. 14	To John Shields	Vol. 3, p. 109.
	382	E. ½ NW. ¼, sec. 32, T. 27, R. 4 E.....	61. 00	.....do	Vol. 3, p. 108.
	494	Fr. sec. 20, T. 27, R. 5 E.....	103. 13	.....do	Vol. 3, p. 122.
Not known...	436	Fr. E. ½ NE. ¼, sec. 29. T. 28, R. 8 E...	79 85	To Robert English...	Vol. 3, p. 129.
	440	Fr. SE. ¼, sec. 29, T. 28,R. 8 E	87. 60	.....do	Vol. 3, p. 100.
	441	Fr. SW. ¼, sec. 29, T. 28, R. 8 E	91 68	.....do	Vol. 3, p. 111.
	442	Fr. NW. ¼, fr. sec. 32, T. 28 R. 8 E	18. 46	.....do	Vol. 3, p. 111.
Oct. 2, 1832	599	Fr. sec. 35, T. 27,R. 1 W.....	159. 72	To Richard Greene ..	Vol. 3, p. 189.
Jan. 18, 1833	733	S. Fr. NW. ¼, sec. 31, T. 27, R. 1 E....	57. 07	To John W. Wright..	Vol. 3, p. 188.
		E. ½ NE. ¼, sec. 33 T. 29, R. 10 E	80. 00		
		W. ½ NE. ¼, Sec. 33, T. 29, R. 10 E....	80. 00		
		E. ½ SE. ¼, sec. 33, T. 29, R. 10 E	80. 00		
		W. ½ SE. ¼, sec. 33, T. 29, R. 10E.....	80. 00		
		S½ NW. ¼,sec. 34, T. 29, R. 10 E.....	68. 00		
		E. ½ SE. ¼, sec. 12, T. 27, R. 3 E.....	80. 00		
		W. ½ SE. ¼, sec. 12, T. 27, R. 3 E.....	80. 00		
		E. ½ SW. ¼, sec. 12, T 27, R. 3 E.....	80. 00		
		W. ½ SW. ¼, sec. 12, T. 27, R. 3 E	80. 00		
		E. ½ SE. ¼, sec. 8, T. 30, R. 14 E.....	80. 00		
		W. ½ SE. ¼, sec. 8, T. 30 R. 14 E.....	80. 00		
		E. ½ SW. ¼, sec. 8, T. 30, R. 14 E	80. 00		
		W. ½, SW. ¼, sec. 8, T. 30, R. 14 E	80. 00		
		E. ½ SW. ¼, sec. 24, T. 31, R. 14 E.....	80. 00		
		E. ½ NE. ¼, sec. 24, T. 31, R. 14 E.....	80. 00		
		W. ½ SE. ¼, sec. 24, T. 31, R. 14 E....	80. 00		
		W. ½ NE. ¼, sec. 34, T. 31, R. 14 E.....	80. 00		
		E. ½NW. ¼, sec. 34, T. 31, R. 14 E.....	80. 00		
		E. ½ NE. ¼, sec. 34, T. 31, R. 14 E.....	80. 00		
		S. ½ NW. ¼, sec. 3, T. 31, R. 15 E	80. 00		
		E. ½ SW. ¼, sec. 3, T. 31, R. 15 E.....	80. 00		
		W. ½ SW. ¼, sec. 3, T. 31, R. 15 E.....	80. 00		
		W. ½ SE. ¼, sec. 17, T. 31, R. 15 E.....	80. 00		
		E. ½ SE. ¼, sec. 17, T. 31, R. 15 E.....	80. 00		

Of these 37 tracts the first 12 were conveyed by Canby to the United States by his deed 31st March, 1835, (given to confirm the deed of Wilson and Milroy,) and these 12 tracts, together with one other, (the 13th, above,) were sold by Howard. The purchasers having failed to pay, the whole 13 tracts were re-sold by the Solicitor and conveyed by him.

III. *As to Canby's Crawfordsville property.*—In Howard's first report, 8th April, 1833, he says: "Canby's real property at Crawfordsville has been conveyed to a third person, but upon my directing the marshal to levy on it, the embarrassment was removed by a surrender of the title, and this property is therefore out of dispute;" and he estimates its value thus: "Real property at Crawfordsville, with farm and out-lots, $2,750." He gave no description of this property, nor any statement of its amount.

This property was not conveyed by Canby to Wilson and Milroy. It seems that Canby bought this property of John Wilson; had paid for it, but not received a deed. When levy was ordered it seems Wilson made a deed and then Canby conveyed it to the United States by deed, 18th July, 1834, of which there is no copy on file. The following statement is from Cushing's report of 19th August, 1843, and was made up

by Cushing from the accounts of Howard's sale. Whether it embraces all that was conveyed by Canby's deed is not known.

Crawfordsville property, "farm and lots," "part of section 5, township 18 north, range 4 west, 131 acres," which appears to have been subdivided and sold as follows:

	Original sale.	Deeded by Solicitor to—	Record.
17½ acres	Sold to Naylor	Isaac Naylor	Vol. 2, p. 165.
17½ acres	Holmes	Magnus Holmes	Vol. 2, p. 161.
17½ acres	Thompson	James Thompso	Vol. 1, p. 160.
25 16-100 acres	Helverson	William Twiuning	Vol. 3, p. 185.
12 47-100 acres	Newberry	Samuel Newberry	Vol. 3, p. 198.
Lot 12, square 22	Clark	No deed on record.	
Lot 19, square 22	Ensminger	No deed on record	
Lot 13, square 22	Pearson	Catharine Mack	Vol. 3, p. 208.
Lot 23, square 22	Hamilton	No deed on record.	
Lots 3 and 4, square 22 (probably 26).	Galey	Wm. S. Galey, "3 and 4, sq. 26"	Vol. 1, p. 178.
Lot 24, square 22	Nutt	No deed on record.	
Lots 15 and 16, square 22	Dunn	George W. Snyder	Vol. 1, p. 180.
Lots 19 and 22, square 27	Newell	Hugh Newell	Vol. 3, p. 207.
Lot 9, square 22	Ensminger	E. Wiltrite	Vol. 3, p. 202.
Lot 15, square 22 (probably 27)	Gilbert	James Askens	Vol. 3, p. 203.
Lots 21 & 22, sq. 27. (22 deeded ab'e).	Williamson	Hugh Newell	Vol. 3, p. 107.
Lot 20, square 27.	Chambers	Hugh Nowell	Vol. 3, p. 131.
Lots 7 and 8, square 26	Carter	John W. Rush	Vol. 3, p. 162.
Lot 20, square 27	Thornton	Entered twice. *Vide supra.*	
Lots 11 and 12, square 23	Barnett	Joseph Haskel	Vol. 3, p. 200
Lot 15, square 21	Anderson	Samuel C. Wilson	Vol. 3, p. 199.
Lots 17 and 18, square 27	Strickland	John W. Rush	Vol. 3, p. 158.
Lot 23, square 27	Kenyon	Samuel C. Wilson	Vol. 3, p. 113.
Lot 14, square 22	Boles	Benjamin T. Ristine	Vol. 1, p. 4.
Lot 13, square 27	Ramey	Samel C. Wilson	Vol. 3, p. 115.
Lots 1 and 2, square 2	Duun	Henry Crawford	Vol. 3, p. 4.
Lot 13, square 21	Martin	John M. Fisher	Vol. 3, p. 197.
Lot 17, square 21	Anderson	No deed on record	
Lot 7, square 21	Runkle	Samuel C. Wilson	Vol. 3, p. 116.
Lots 13 and 14, square 23	Ramey	P. Jennison	Vol. 1, p. 181.
Lot 11, square 22	Ramey	Deed for "Lot 17," sq. 22, to W. Kunkle. Lot 17 is not in Howard's report; probably this is same lot.	Vol. 3, p. 220.
Lot 14, square 21	Keeny	K. Keeney	Vol. 3, p. 304.
Lot 10, square 22	Williams	Samuel C. Wilson	Vol. 3, p. 114.

Unnumbered	Sold to Miller,	for $517 32	Eight deeds are made and recorded for unnumbered lots in Canby's addition to Crawfordsv'e, no doubt conveying these lots. The original purchasers failed to pay, and the Solicitor resold, &c.
Do	Jones,	for 734 00	
Do	Moore,	for 350 00	
Do	Clarke,	for 355 00	
Do	Miller, (Chas.,)	for 150 00	
Do	Garreter,	for 187 00	
Do	Taylor,	for 363 00	
Do	Jones,	for 407 00	

All the above property was sold by Howard on time, notes with personal security taken, deeds to be made when fully paid. Some of these notes were paid and deeds made, some partly paid, some exchanged for notes of other parties, many were sued on, &c., &c. A statement is made below of all that have not yet been deeded by Solicitor:

NOTE.—As to Taylor's notes for	$363 00
Kenyon's notes for	101 33
Miller's (Charles) notes for	150 00
Williamson & Newell's notes for	134 00
Tillard's notes for	160 00
Roward's notes for	78 00
Newell's notes for	40 00
Total	1,026 30

"To secure the payment of these notes Canby placed in Lane & Wilson's hands a note on the Rob Roy Manufacturing Company for $700;

also a note on Wm. Rialt for $500, because he (Canby) had agreed with the purchasers to take these lots," &c. (See Cushing's report.)

IV. *As to the Hendricks lands.*—Howard says in his first report, 8th April, 1833, "I found that 1570.95 acres had been entered in the name of Governor Hendricks, for which the clerk of the receiver's office stated nothing was paid at the time, and that the lands were in fact entered by Dr. Canby. Upon these lands I directed a levy according to your instructions." He valued these lands at $4,000. It seems that they were embraced in Canby's deed to his sureties, and in their deed as well as his to the United States. It does not appear whether or not Hendricks also conveyed them. (These were probably condemned by the insurance agent in the attachment case to District of Columbia.) Howard gave no description of them, but he sold them with the rest. The following description is from the deed of Canby to the United States, and from Cushing's report:

Lands entered by Canby in the name of William Hendricks.

Description.	S.	T.	R.		Acres.	
W. fr. ¼	14	21	8	W.	.....	Deeded by Solicitor.
S. ½ SW. ¼	12	21	8	W.	.....	Deeded by Solicitor.
E. ½ SW. ¼	33	21	7	W.	.....	Deeded by Solicitor.
W. ½ SE. ¼	33	21	7	W.	.....	Deeded by Solicitor.
E. ½ NW. ¼	17	20	7	W.	.....	Deeded by Solicitor.
E. ½ NE. ¼	15	21	8	W.	.....	Deeded by Solicitor.
SE. ¼	15	21	8	W.	.....	Deeded by Solicitor.
SW. ¼	26	23	1	E.	.....	Deeded by Solicitor in two deeds.
NW. ¼	25	23	1	E.	.....	Deeded by Solicitor.
NW. ¼	17	14	1	W.	.....	†W. ½ deeded.
*W. ½ SE. ¼	13	14	2	W.	.....	Whole ¼ section deeded. *Vide infrà.*
W. ½ SW. ¼	8	14	1	W.	.....	Deeded by Solicitor.
E. ½ SE. ¼	13	14	2	W.	.....	Deeded by Solicitor. *Suprà.*

*E. ½ in Cushing's report. †No deed for E. ½ NW. ¼ S. 17, T. 14, R. 1.

All contained 1,570 acres, more or less. These Hendricks lands were finally all conveyed by the Solicitor except the half of one of the tracts, viz., east ½ northwest ¼ section 17, township 14 north, range 1 west, being in Hendricks county, Indiana.

V and VI. *As to the Hillis lands and other lands in the same condition.*—Howard says in his first report, "There appeared also 222 acres in the name of David Hillis, which were said to be in the same situation, (*i. e.*, as the Hendricks lands,) but as he was a surety I did not give myself much trouble to inquire into the fact. I directed it to be levied on." Also, "some other lands had been entered in this way and subsequently conveyed, some that I could not learn the precise condition of; but in all cases where Canby appeared to have the legal title, or where I had just grounds to believe he had the equitable title, I directed levies. In making an estimate of his property, however, I have excluded all that I have considered doubtful, and only valued such as have fair, unembarrassed titles."

There is not anywhere given any list of these Hillis and other lands, but the deed from Canby to the United States, 31st March, 1835, conveys the following:

Description.	S.	T.	R.		Acres.	
NE. ¼	2	26	1	W.	.....	Deeded.
N. ½ NW. ¼	2	26	1	W.	.....	Deeded.
SE. ¼	2	26	1	W.	.....	Deeded.
E. ½ SW. ¼	2	26	1	W.	.....	Deeded for E. ½ SW. ¼, probably for same tract.
NW. ¼	2	26	1	E.	.....	Deed in 4 deeds, though descript'n is not good.
N. ½	11	26	1	E.	.....	Deeded in 4 deeds.
NW. ¼	11	21	8	W.	.....	Not in Cushing's report; not deeded.

And the following are in Cushing's report and sold by Howard, though not in Canby's deed:

Description.	S.	T.	R.		Acres.	
S. fr. ¼ NW. ¼.....	31	27	1	W.	57.07	Deeded.
S. ½ NE. ¼	35	23	1	E.	63.38	Deeded.
S. ½ NW. ¼.....	35	23	1	E.	.....	Deeded.

There is nothing which will show whether these tracts include the Hillis lands and other lands referred to by Howard, but they (with the preceding) make up all that were sold by Howard and all that appear to have been disposed of in any way. The last tract but one, south ½ northeast ¼ section 35, &c., though reported sold by Howard, is believed by Cushing to have been so reported by mistake for south ½ northeast ¼ section 25; but this and the last tract are conveyed by the solicitor to Charles Conway (Records, volume 3, pages 193, 194) as Canby's land. All the other tracts have been conveyed by the Solicitor except northwest ¼ section 11, township 21 north, range 8 west.

VII. *As to the Illinois lands.*—[From Howard's report, April 8, 1833.] "These deeds (to Melroy and Wilson) embrace the canal lands and the Illinois lands," &c. "I have made some inquiry with regard to the Illinois lands, but am not satisfied as to title or value. I presume the title is in Canby, but it is not absolutely certain. I have no means of ascertaining short of Vandalia, where it is said the title deeds are deposited. I have addressed General Duncan on the subject of their value, and will shortly receive (I presume) something satisfactory. I have made some further inquiry respecting it, and my conclusion will be seen in the estimate I have set upon them in this report." "Lands in Illinois, according to my present information, 11,207 acres, at 40 cents per acre, $4,482 80." The Solicitor instructed Howard, May 30, 1833: "Whenever you shall have obtained the requisite information you will please complete your report respecting Dr. Canby's Illinois lands." When Howard agreed to suspend the imprisonment clause of the warrant it was on condition, among other things, "that he (Canby) procure, or cause to be procured, conveyances showing his regular chain of title to the Illinois lands, vesting them in the United States to be sold and proceeds applied to his debit." On March 11, 1837, Canby wrote to the Solicitor asking to have his Illinois lands released from the lien of the levy, &c., representing that the Indiana property was abundant to pay his debit, &c.; that "the property levied on (*i. e.* in Illinois) cost me $18,000, and was purchased between the years 1818 and 1823 inclusive. It has been dead on my hands ever since, and now that there is a prospect of being able to realize something for it, I wish to be at liberty to do so. I hope you will therefore direct the proper officer," &c. "The letter of General Howard and his returns will, I presume, be satisfactory authority for the action I request. I would, however, observe that of the claims assigned to the United States, at least $17,000 with interest will be collected, and I presume the last within the present year. The sales of real estate transferred to the United States exceed $42,000, and the unsold property is worth about $30,000, nearly double the claim against me when properly adjusted." Howard also wrote recommending the release, and on March 28, 1837, the Solicitor wrote to Harry Wilton, marshal, to "return to this office unexecuted the district warrant in this case transmitted to Charles Slade, esq., your predecessor,

on April 15, 1833, by which the property levied on by you will be released from the operation of the lien created by the levy." On June 18, 1833, Howard writes: "In relation to Dr. Canby's Illinois lands I am not prepared to change my statement with regard to their valuation. General Duncan, who is well acquainted with the value of Illinois lands generally, and particularly of the military lands, supposes that if the whole of Dr. Canby's lands were sold together, $35 or $40 per ¼ section in cash could be had; if sold in separate tracts, a still larger sum;" and he adds, "I have no doubt a credit will cause a ready sale at a high price." They were registered for taxation in the names of Sarah Canby and John H. Canby & Co. They have been once sold for the taxes and redeemed in these persons' names. Dr. Canby's statement is that the lands have been conveyed to him, but where the deeds are, or whether in existence, I have been unable to learn. I presume, however, that if sales shall be made under your instructions of May 30 his sureties will be able ot control the title," &c.

There is no description of these lands, nor any other mention of them than the above in the case.

VIII. *As to the tract on the Mississippi.*—There is no mention of this property, except that Howard, in his first report of Canby's property subject to levy, says: "The tract on the Mississippi—said to be valuable —$1,000." There is no description of it, nor anything to show even in what State it is situate.

IX. *Household property.*—Before the appointment of Howard as agent, the household property of Canby had been sold by the marshal for $250, and $248 was paid into the treasury.

X. *The attachment vs. Hendricks and Tipton.*—In 1832 proceedings in attachment were commenced in the District of Columbia against Canby; Wm. Hendricks and Jno. Tipton were garnishees; judgment was in favor of the government, and on the 20th May, 1834, Hendricks paid to treasury $2,281 40, and on 21st May, 1834, Tipton paid $1,947 11.

XI. *Property of sureties levied on.*—In 1833, under the distress warrants, levies were made on the following, viz:

1. As the property of Joseph Canby:

½ of lot No. 53 on original plat of Madison, Indiana, worth..	$200
Undivided ¼ of block in Madison, on east side of Main, and between High and Ohio streets.....	1,000
West ½ of a block in said town, between Vine and Mill streets	1,000
14 acres lying west of Madison steam mill and adjoining Jacob Burnet.....	1,400
Lots Nos. 7 and 12, lying west of Mulberry street.....	800
Other lots lying between Nos. 10, 11, 12 and Wharf and Clay streets, and a lot between Ohio street and the river.....	1,000
Total.....	5,400

2. As the property of Jeremiah Sullivan:

Lots 15 and 16 in first addition to the town of Madison, on which are some very valuable improvements.....	$3,000

3. As the property of N. B. Palmer:

116½ acres of land, improved, lying near Madison.....	$1,500

4. As the property of David Hillis:	
450 acres of land, at $6 per acre	$2,700
122 96.100ths acres, worth, as is said, $1 50	334
Total	3,034
5. As the property of M. G. Bright:	
West ½ lot 30, original plat of said town, [Madison?] and brick building thereon	$1,000
6. As the property of General Jon. Milroy:	
320 acres, lying on the Wabash, with various improvements, $10 per acre	$3,200
Personal property	300
Total	3,500
7. As the property of John Wilson:	
320 acres of land, worth $5 per acre	$1,600
Real property at Crawfordsville	2,000
Household furnitnre	150
Total	3,750
8. As the property of Isaac Miller:	
152 acres of land	$300
9. As the property of Robert Piatt, of Kentucky:	
276 acres of land	$4,140
Negroes and personal property	6,000
Total	10,140
Total property of all the sureties levied on	31,624

Howard says the above valuations were made in haste by the several marshals, and in part by himself; also, "the property of Piatt was sold by him to his son to defeat this claim, &c. The property levied on in Ohio is not subject of any certain valuation, owing to uncertainty of title, encumbrances, &c. The stale claim of Canby to the property in Cincinnati is probably worth but little." (See report July 12, 1833.)

There is no account whatever of any Ohio property levied on now on file or record.

XII. *As to other interests.*—Howard says, 8th April, 1833, "Doctor Canby seems to have been trading with a view to the present state of things, as early as July last, conveying his stores and property on a credit. He transferred to a man named Vance a large amount of debts; some say $6,000. &c. He sold a store in Crawfordsville, to Miller and Milroy, about the time of the default, for which they gave the notes for $9,000 in the schedule. I believe they will be good for the debts, and I thought it better not to direct a levey on the remnant of the store, &c., would not bring as much as may be realized from the notes. I did not direct a levy on the establishment of Piatt & Co., though I doubted the fairness of the transfer, &c.; have no doubt that he (Canby) made it, sup-

posing that a better arrangement could be made with the notes of purchasers than by a sale of the goods for the satisfaction of the debt to the United States. $4,000 of the notes in the schedule are upon Piatt & Co., for this store of goods, and it is said that $6,300 of the money in Tipton & Hendricks's hands is held by Tipton on account of his having been an indorser for Piatt & Co."

It seems also from the correspondence that Canby agreed to turn over to the United States his interest in the claim of Piatt's representatives on the War Department for $64,000. This claim was afterwards allowed by act of Congress; but what the interest or title of Canby in it was does not appear; nor whether any effort was made to secure it.

No further sales of property were made until many years after, when the Solicitor resold a part of the property which had been sold by Howard and not paid for. All parties seem to have considered the sale notes, together with the transferred notes, &c., about sufficient to pay the debt when collected. The business of collections was put in the hands of the district attorneys. Howard collected $13,809 78, less fees and expenses, and on 1st January, 1840, transferred to John Pettit, and took his receipt for notes, attorney's receipts, and cash, to amount of $32,501 33, with credits on the notes of $990 30, leaving total balance receipted for by Pettit, $31,531 03.

Pettit made no report whatever of the proceedings, and when he transferred to Cushing, his successor, 18th September, 1841, took a receipt for notes, &c., in this case, with other cases, without any credits indorsed or statement of what he had received thereon, merely remarking verbally, (as Cushing states,) that some payments had been made to him. Pettit was called on for a report by the Solicitor, but never made any. Cushing was directed to ascertain the amount received by Pettit, and on 13th June, 1842, reported as follows:

1840, January 1, cash received of Howard	$415 00
1840, May 22, cash paid him by C. Ragan & Co	95 00
1840, May 22, cash paid him by David Stipp	100 00
1840, January 11, cash paid him by Lane & Wilson	155 00
1840, February 17, cash paid him by Lane & Wilson	362 50
1840, April 13, cash paid him by Lane & Wilson	50 00
1840, April 30, cash paid him by Lane & Wilson	40 00
1840, August 28, cash paid him by Lane & Wilson	250 00
1840, October 30, cash paid him by Lane & Wilson	235 00
1841, March 30, cash paid him by Lane & Wilson	120 00
1841, May 5, cash paid him by Lane & Wilson	229 00
Total	2,041 50
Credit by amount paid the marshal, December, 1840	500 00
Balance unaccounted for	1,541 50

NOTE.—The above items are added up wrong. The total amount is $2,051 50, and balance due by Pettit is $1,551 50.

Cushing was instructed to demand the amount of Pettit, which he did, and Pettit replied 19th June, 1842: "I have only to say that I have no money in my hands belonging to the United States, but, on the contrary, they owe me a large sum." There is no evidence that this money, collected by Pettit, was ever paid into the treasury. Cushing was directed to ascertain accurately the amount received by Pettit in this and other cases, with a view to a suit against him, but no suit appears to have

been begun. Lane and Wilson's collection fees were deducted by them, and so the whole amount received by Pettit should be credited to the Canby debt, viz., $2,051 50.

Cushing received in this case, September 15, 1841, of Strickland, Boies and Ramey, $319 56, which he paid over. It does not appear that he received any more. He took many judgments, but little was collected and was paid to the marshal. On 24th February, 1845, Robert Hanna, marshal, paid $1,027 80, and in 1856 he paid from sale of land of one of the purchasers $500, less expenses, $71 82; total paid to treasury, $428 18. Cushing transferred the papers, &c., to D. Mace, his successor, who did very little in this case. It does not appear that he collected anything.

As to the present state of the claim against Canby and his sureties, and the amount still due thereon, the following calculation is made in the usual way from all the books and papers in the department relating to the case:

Distress warrant issued 27th March, 1833, for		$52,312 04
Add interest to 27th March, 1834, one year		3,138 72
		55,450 76
Deduct amount paid by marshal 7th June, 1833	$250 00	
Deduct amount paid by Hendricks, 20th March, 1834	2,281 40	
Deduct amount paid by Tipton, 21st March, 1834	1,947 11	
Deduct amount paid by Howard, 27th March, 1834	1,400 00	
		5,878 51
Balance due 27th March, 1834		49,572 25
After this date the payments never exceeded the interest; but as large payments were made, and so long ago, they ought probably to be deducted, say as follows:		
Add interest to time of last payment by Howard, 26th October, 1839, (5 years 7 months)		16,606 67
		66,178 92
The total amount received by Howard during his agency, ending January 1, 1840, was $13,809 78, of which he paid over $12,742 89, (leaving $1,066 89, of which his fees and expenses were $715 50, and he paid to Pettit $415, and claimed a balance due him by government of near $300;) $1,400 being credited above on 27th March, 1834, the balance to be now deducted is		11,342 89
Balance due 26th October, 1839		54,836 03
Deduct amount paid to Pettit (not accounted for)	$2,051 50	
Deduct amount paid by Cushing 15th September, 1841	319 56	
Deduct amount paid by Hanna, (marshal,) 24th February, 1845	1,027 80	
Deduct amount paid by the marshal 1st December, 1856	428 18	
		3,827 04
Leaving balance still due		51,008 89

On which interest should be calculated from 26th October, 1839, and the balance now due (say October, 1866) will be over $133,000.

The following is an abstract of the reports of the General Land Office (in the file room of the Treasury Department) in this case, and shows the whole account of Canby as it stands on the books at the Land Office and at the Treasury Department:

Reports.			
No. 2532.	Amount due per report No. 2359, 12th March, 1833		$52,312 04
	Credit by treasury warrant No. 960, 28th June, 1833; paid by G. Taylor, (marshal).....		250 00
No. 2689.	Credit by treasury warrant 1217, 31st March, 1834		5,628 51
No. 3178.	Credit by warrants—		
	No. 1811, 31st December, 1835, (paid 3d December, 1835).....	$362 00	
	No. 1822, 31st December, 1835, (paid 5th May, 1835).....	700 00	
	No. 1982, 31st March, 1836, (paid 2d February, 1836).....	2,017 00	
	No. 2098, 30th June, 1836, (paid 30th May, 1836).....	450 00	
		3,529 00	
	[$1 to be credited for error in last report; see Comptroller's report.]		
No. 3249.	Credit by warrant 2212, 30th September, 1836, (paid 30th July, 1836).....		1,100 00
No. 3384.	Credit by warrant 2331, 31st December, 1836, (paid 20th December, 1836).....		1,170 00
No. 3473.	Credit by warrant 2424, 31st March, 1837, (paid 14th February, 1837).....		1,277 97
No. 4062.	Credit by warrant 3264, 31st December, 1838, (paid 10th October, 1838).....	$1,322 50	
	(Paid 5th December, 1838).....	1,440 00	
			2,762 50
No. 4327.	Credit by warrant 233, 31st December, 1839, (paid 23d October, 1839).....		1,034 34
No. 4639.	Credit by warrant 738, 31st December, 1840, (paid 19th March, 1840).....	$499 32	
	Credit by warrant 5, 8th January, 1841, (paid by attorney to marshal).....	500 00	
			999 32
No. 4772.	Credit by warrant 878, 31st March, 1841, (paid by marshal of Missouri, 15th February, 1841).....		297 05
No. 4971.	To warrant in favor of Treasurer of United States for amount of warrant 878, (above,) erroneously drawn, &c., payment having been on account of Aug. Jones, of Missouri, &c.....		297 05
	[The commissioner credited Canby with a payment made by Jones, which error is corrected, as above.]		
No. 5072.	Credit by warrant 1327, 31st March, 1842, (paid 18th February, 1842, by Cushing).....		319 56
	And the balance due to the United States, exclusive of interest, on 31st March (1842) last, is.....		33,897 59

On 10th October, 1845, Colonel Pleasants, chief clerk, made for the Solicitor an abstract of this case. In conclusion he gives the following general statement:

Distress warrant, 27th March, 1833, for.....	$52,312 04	
Notes transferred, (as near as can be ascertained).....		$17,188 26
Sales made by General Howard, (per notes, &c).....		42,651 59
Amount due by Hendricks and Tipton.....		4,228 51
Amount collected by marshal, &c.....		250 00
Total assets.....		64,318 36

Of the above assets it appears there have been collected and accounted for:

Of notes transferred by Canby, as collateral.....	$6,230 60
Of notes taken for lands, &c.....	9,995 73
Amount in hands of Hendricks and Tipton.....	4,228 50
Collected by the marshal, under the warrant.....	250 00
Making together.....	20,694 83

Leaving still uncollected:

Of notes taken by Howard for lands, &c.....	$32,655 86
Of notes transferred by Canby, as collateral.....	10,957 66
Making.....	43,613 52

Of which Pettit collected $1,541 50, which he refuses to pay, &c.

The foregoing three several statements, when the proper calculations of interest are added, will show very nearly the same result, and there would seem to be no difficulty in stating the present indebtedness of Doctor Canby and his sureties. But, at the conclusion of his statement, Colonel Pleasants says:

> And the question presents itself, how does the debt of Israel T. Canby actually stand? and upon what principle shall the accounting officers proceed to adjust and settle the account? One mode of adjustment is to take up the balance for which the warrant issued, $52,312 04, charge interest from the date, and credit according to date, the collections in cash by the marshal, $250, the payment by Tipton and Hendricks, $4,228 51, the amount of sales of Canby's lands by Howard, (for which notes were taken, bearing interest from date, payable to the Secretary of the Treasury,) $42,651 59, and the collections made by General Howard and his successors on the notes transferred by Canby as collateral security for the debt, about $6,230 60.
>
> Adjusting the account upon this principle the debt of Canby would be very nearly extinguished, so nearly so that in all probability a further sum will be collected from the notes collaterally assigned to discharge any balance that may remain. This mode of settlement would relieve Canby and his sureties, but throw the United States upon the individual debtors to and purchasers of Canby's property.
>
> Another mode of settlement or adjustment suggested is to regard all the proceedings of General Howard as collateral, (I mean the notes transferred by Canby and the notes taken by him for sales of property,) and entitling Canby to credits only so far as they should be realized in cash and paid into the treasury. If this should be decided to be the legal and proper principle of settlement, then the cash collected and deposited will scarcely equal the accruing interest on the debt, and will leave the principal *now* due from him very nearly as large as when proceedings were commenced. (See statement on file.)

The Solicitor, in 1856, seems to have favored the former of the two plans suggested by Colonel Pleasants, and asked the opinion of the Secretary on the subject. It seems that the Secretary replied, but no such reply is found, either in the office of Solicitor or Secretary, nor is there any entry of the receipt of it on the dockets. Possibly the Secre-

tary approved the Solicitor's opinion, for, on November 13, 1856, Thomas A. Hendricks, Commissioner of the Land Office, wrote the Solicitor for an account of all payments made by Dr. Canby, with a view to a readjustment of the account, and Colonel Pleasants, acting solicitor, replied, November 26, 1856, giving a general account of the claim, with a statement of the amount of all the sales of land, both by Howard and by the Solicitor, "making an aggregate of $43,961 59, for which Canby is entitled to credit in the readjustment of his accounts." But the Commissioner of the Land Office it seems never acted upon these instructions, for he never readjusted the account, and there is no adjustment reported since March 31, 1842, as stated above.

There seems to be little, if any, foundation for the opinion that Canby should be credited with the total amount of sales at the date of sale, and much that favors the opposite view.

1st. In Wilson and Milroy's deed to the United States the lands are conveyed, &c., "to be held by the United States, and sold in such manner and upon such terms as the Secretary of the Treasury, the Solicitor of the Treasury, &c., &c., may direct, and the proceeds of such sale (after deducting the costs and charges thereof) to be credited upon the demand of the United States against Israel T. Canby," equally upon the two bonds. And Canby's deed to the United States uses the same words.

2d. In fact, during the whole proceedings the numerous partial payments made by purchasers of the lands were credited at the time of payment, after deducting expenses.

3d. Neither Canby nor the sureties ever claimed to be credited with the total amount of sales, but, on the contrary, at different times they urged that indulgence should be given to the purchasers in order to realize the more towards satisfying the debt. It is true that Howard, in his letter of April 7, 1835, encloses a "statement showing the amount of notes which have been received on account of the debt of the United States against Israel T. Canby, &c., by T. A. Howard, attorney, &c., and for which said Canby is entitled to a credit, to be entered so as to stop interest on their respective amounts at the respective dates given below." And then he gives the dates and amounts of the several purchasers' notes at first three sales. Nothing else has been found which favors that view, and Howard's incidental statement would seem to mean nothing more than that, as the notes bear interest from date they would, if paid, stop interest on so much of the debt.

If, however, the account be adjusted on the mode of crediting Canby with the total amount of sales at the date of sale, the account would stand as follows:

Amount of warrant issued 27th March, 1833	$52,312 04
Add interest to 27th March, 1834, 1 year	3,138 72
	55,450 76
Deduct amount paid to 27th March, 1834, (as before)	5,878 51
	49,572 25
Add interest to 25th November, 1835, 1 year, 8 months	4,957 22
	54,529 47
Deduct amount of first five sales by Howard	8,200 95
	46,328 52

Deduct also amount paid by marshal (personal property)	$250 00	
Deduct amount paid by Hendricks (under attachment)	2,281 40	
Deduct amount paid by Tipton (under attachment)	1,947 11	
		$4,478 51
Balance due 25th November, 1835		41,850 01
Add interest to 11th January, 1837, 1 year, 1 month, 17 days		2,824 87
		44,674 88
Deduct amount of 6th and 7th sales by Howard		33,750 00
		10,924 88
There is no accurate statement of what Howard collected on the notes assigned by Canby, nor date of collection. Colonel Pleasants puts it at $6,230 60. Taking this as correct that amount should be deducted also		6,230 60
Balance due 11th January, 1837		4,694 28

Adding interest to present time, (1866,) the balance now due will be about $13,000. This is without deducting anything for expenses, of which there is not now any full account, but which must have exceeded $2,000.

The following is a statement of the property levied on and conveyed to the United States, and which still remains undisposed of:

1. The notes, &c., transferred as collateral, so far as we have any account of them, were either collected, or the makers pursued to insolvency. There must have been, however, a large number of which there is no account; but as they were all dated prior to 1833, and not payable to the United States, but to Canby or others, they could not now be collected.

2. The canal lands, all that were included in Canby's deed, were sold by Howard and resold by the solicitor, and are all conveyed; but there remains a large amount of canal lands (see statement *supra*) which were bought by Canby and not transferred to the government, of which one tract was sold by Howard, though nothing appears to have been done with the residue.

3. The Crawfordsville property was sold, and conveyances are recorded for all except the following:

Lot 12, in square 22, sold to Clark; no deed on record.

Lot 19, in square 22, sold to Ensiminger; no deed on record.

Lot 23, in square 22, sold to Hamilton; no deed on record.

Lots 3 and 4, in square 22, sold to William S. Galey; no deed on record.

[There is a deed to Galey, for lots 3 and 4, square 26, vol. 1, p. 178, probably same lots.]

Lot 24, in square 22, sold to Nutt; no deed on record.

Lot 20, in square 27, reported twice by Howard as sold to different parties. There is a deed on record for one lot 20, square 27, to H. Newell. Probably stated twice by Howard by mistake.

Lot 17, in square 21, sold to Anderson; no deed on record.

Lot 11, in square 22, sold by Howard to A. Ramsey; no deed recorded, but there is a deed for lot 17, square 22, (vol. 3, p. 220,) which was not sold by Howard; probably the same lot.

There were also eight (8) lots in Canby's addition sold by Howard without numbers or squares; (he reports that he will find the numbers and return them, but never did it.) The purchasers, it seems, never paid, and a corresponding number of unnumbered lots were sold by Gillett, solicitor. They are, no doubt the same lots.

4. The Hendricks lands were all sold and deeds are recorded on Solicitor's record for all, except "east half northwest quarter section 17, township 14 north, range 1 west, in Miami county, Indiana."

This tract was sold by Howard, at Danville, Indiana, on 5th November, 1836, to Zachariah Reagan, for $770, on a credit of one, two, and three years, at six per cent. interest; notes, $256 66⅔ each, with Robert Reagan, surety. (See Howard's report, 12th December, 1836.) Cushing's report, 21st August, 1843, says "the first two notes were paid to Howard in 1838; on third note, $95 were paid to my predecessor, John Pettit, May 28, 1840. I have entered suit for the balance." There is no deed on our records for this land, and no evidence that the balance was ever paid.

5. The Hillis and other lands are not described or identified in any way, but the list above embraces all the other lands reported sold by Howard, and they are all conveyed by the Solicitor.

6. The Illinois lands were released from the levy by the Solicitor on 27th March, 1837, (*vide supra.*) But they were deeded by Canby and wife to Milroy and Wilson, (sureties,) to indemnify them, &c. They are reported to have been entered for taxation in the names of Sarah Canby and John H. Canby & Co.; also to have been sold for taxes and redeemed in these persons' names.

7. The tract on the Mississippi, of which nothing is known.

11. The property of the sureties was levied on, and neither sold nor released. (See statement above.) The sureties are believed to be good.

12. The claim of Piatt on the War Department was allowed by Congress to the representatives of Piatt, but what the interest of Canby in it was, or whether he recovered it, is not known. Judgments were obtained against many of the purchasers of lands, &c., most of which were never paid; but as the lands in these cases were mostly resold, the judgments are of no value.

Dr. Canby died in April, 1846, and nothing is known as to his estate. A judgment was rendered against him on notes which he gave in lieu of notes of some purchasers of his lands, and nothing made on execution.

February 19, 1867.—Since the above abstract was made, some additional papers are found, among which are two letters from Solicitor to Secretary, submitting the question whether to credit the gross sales or the collected proceeds, with the decision of the Secretary (Guthrie) endorsed on letter dated May 29, 1856, "That the sales provided for in the deed were not proceeds, until the money was collected, and that the account of Canby shall be restated, crediting the proceeds so actually collected, after deducting the costs and charges, and the balance due, if any, collected from him and his sureties."

TREASURY DEPARTMENT, SOLICITOR'S OFFICE,
June 18, 1868.

The foregoing is an abstract made in this office of the account between the United States and Israel T. Canby, and is believed to be a fair exhibit thereof.

EDWARD JORDAN,
Solicitor Treasury.

It further appears to the committee that all of the sureties of said Canby have departed this life, excepting N. B. Palmer, Jeremiah Sullivan, and M. G. Bright.

Considering the great length of time which has elapsed since the original default of the principal; considering the fact that only three of his sureties are now living; considering the *laches* of the government in not making an earlier adjustment of the case, when the facts involved in it could have been easily and certainly ascertained, for the neglect of doing which no reason whatever is shown; considering the fact apparent on the face of the foregoing statement that sufficient effects of the said Canby have been transferred to and placed in the hands of the officers and agents of the government, which, if those agents and officers had exercised reasonable diligence, would have realized an amount amply sufficient to have satisfied the default aforesaid of the said Canby; considering that the government was so thoroughly convinced that said effects were more than sufficient for its purposes, it voluntarily released to said Canby a portion of said effects, to wit, what is called in the foregoing statement the Illinois lands; considering the facts admitted that prior to October 10, 1845, when there had been realized and accounted for to the government out of the effects so transferred to the government as aforesaid the sum of $20,694 83 in cash, and that the government then still had in its hands notes taken for sale of lands of said Canby, $32,655 86, and notes transferred by Canby to the government for the further sum of $10,957 66, and that the government had under its control other lands of the said Canby still unsold; considering that the government is now unable to account for said notes, lands, &c., rendering it probable that portions of said notes may have been collected by its agents and not accounted for, and the remainder, in whole or in part, may have been so neglected by the agents of the government as to render their collection at this time impracticable; in fine, considering that the government having received under its own control, of the effects of said Canby, ample indemnity for his said default, which it failed to make fully available through its own neglect, or the negligence and default of its authorized agents, and is now itself unable to account for the means placed in its hands, the committee are of opinion that it would now, 35 years after the default of the principal, be harsh and unjust to make his few surviving securities responsible. They therefore recommend the passage of the said bill.

41ST CONGRESS, 1st Session. | SENATE. | REPORT No. 6.

IN THE SENATE OF THE UNITED STATES.

APRIL 2, 1869.

Mr. THAYER made the following

REPORT.

[To accompany joint resolution S. R. No. 2.]

The Committee on Military Affairs, to whom was referred the Senate joint resolution No. 2, for the relief of John E. Reeside, having had the same under consideration, respectfully beg leave to report:

The testimony before the committee shows that John E. Reeside was the contractor on route No. 2, for the year 1867; that he commenced in good faith to carry out his contract, but unprecedented rains deluged the country, and for weeks at a time the roads were impassable, bridges swept away, and the streams not fordable; that about this time the Indian war broke out, and freighters could not be induced to go on the road without extraordinary compensation. With combination of other circumstances over which he had no control, rendered it impossible to carry out this contract without any fault or neglect of his own. These facts are fully substantiated and proven by the letters of General Hancock, Captain Bradley, the quartermaster at Fort Riley, General Easton, chief quartermaster department of Missouri, General Rucker, acting Quartermaster General, and uncontradicted affidavits of parties who are fully conversant with the facts.

As nothing is asked but the payment of John E. Reeside for the work done, under almost insurmountable difficulties, and as the evidence all shows he is entitled to it, the committee recommend the passage of the joint resolution.

IN THE SENATE OF THE UNITED STATES.

APRIL 6, 1869.

Mr. WILLEY made the following

REPORT.

[To accompany bill S. No. 260.]

The Committee on Patents, to whom was referred the petition of Polly Hunt, administratrix, and George W. Hunt, administrator of Walter Hunt, deceased, praying to be allowed a rehearing before the Commissioner of Patents of their application for an extension of patents for improvements in manufacturing paper collars, beg leave to make the following report thereon:

That Walter Hunt obtained an original patent for paper collars, dated the 25th day of July, 1854.

That the subject-matter of the same was afterwards divided into five divisions, on which patents were, severally, reissued, one in 1864, two in 1865, and two in 1866.

That in 1859 the said Walter Hunt departed this life, and the petitioners were appointed administratrix and administrator of his estate.

That, prior to the expiration of said patent and within the time prescribed by law, application was made before the Commissioner of Patents for an extension of said reissued patents.

That said application was heard and considered by one of the assistant examiners in the Patent Office, who made an elaborate report in favor of such extension.

That said report was reviewed by one of the principal examiners in the Patent Office, who also decided that such extension ought to be granted.

That said applications and reports thereon were laid before A. M. Stout, esq., the then acting Commissioner of Patents, who rejected said application for extension, and therefore no extension was granted.

The petitioners allege that at the time said application was finally laid before the said acting Commissioner of Patents, he was "embarrassed by circumstances which rendered him unable to give much, if any, time to the examination of the case," and that, therefore, his examination was superficial, incomplete, and greatly to the prejudice of the merits of their claim. In explanation and confirmation of these allegations the petitioners have filed with their petition the following letter of the said acting Commissioner:

WASHINGTON, D. C., *December* 12, 1868.

SIR: I have lately been called upon, professionally, as a patent attorney, on the part of Polly Hunt and George M Hunt, widow and son and administrators of Walter Hunt, deceased, for a review of a decision which I rendered on the 24th day of July last, while acting as Commissioner of Patents, adverse to their application for an extension of the patents granted to said Walter Hunt on the 25th day of July, 1854. I have carefully reviewed the

testimony and the written arguments filed in the case. I did not write out my opinion at the time of refusing the extension; I intended to do so afterwards, but as I was relieved from my position as acting Commissioner in a day or two afterwards, I never did so. I am informed that Mrs. Hunt and her son, as administrators, intend to ask Congress, by special act, to authorize the Commissioner of Patents to entertain a new application for an extension, and grant it if he shall be of opinion that it ought to be done. They desire me to inform you of my present opinion of the merits of their claim to an extension, and also whether or not my opinion is the same it was when I decided the case officially, and if my opinion now is different from what it was then, and to state to you the reasons for such change of opinion. I will do this, but must do it briefly; but before doing so will suggest that, at the time I had the case under consideration, *I was pressed and embarrassed by much important official business*, including *several extension and appeal cases, involving much labor in disposing of them.* Besides business of this character, I was endeavoring, with the authority of the Committee on Patents, to *procure additional room for the use of the Patent Office.*

I gave a good deal of time and consideration to this subject, and did not render my decision in the Hunt extension case *until the day before its expiration.*

My recollection is that I was mainly influenced by two considerations: 1st. I had formed the opinion from the examination of the evidence, as far as I had time to examine it, that it was doubtful whether the invention of Hunt had sufficient novelty to entitle him to his original patent, and that if it had he was perhaps sufficiently remunerated by the amount which he had received for it. 2d. I formed the opinion that the assignees of Walter Hunt, after his death, expanded the original invention by *five* reissues to such an extent that the reissued patents were perhaps void; that these assignees had made a successful effort to embrace in these successfully reissued patents all the improvements in the manufacture of paper collars made by others after the inventor was dead and gone, and in this way were trying to perpetrate a fraud upon the country.

This was evidently my impression, for I made all the reissued patents, five in number, to share the same fate.

After reviewing the whole case, my impression of the novelty of the invention is much stronger than it was, and I am satisfied from the proof that if Walter Hunt received any remuneration at all it was merely nominal; and further that he made every possible effort to introduce and make profitable to himself his invention before he assigned it away. He lacked capital, and made several efforts to raise it by assigning interests, but failed in all.

Upon the second division of the subject my opinion now is much different from what it was when I refused the extension. My opinion is that such reissued patent should have been allowed to stand or fall upon its own merits, and that some one or more, if not all of them, must have *contained* the original invention of Walter Hunt. It does not appear that I took this view of the case, or that the counsel for the application presented that view to my mind.

Again, if the invention of Hunt be of ever so small a value, and he failed after using due diligence to obtain sufficient remuneration, *no action* on the part of his assignees ought to prejudice the claims of his family to an extension; for after the assignment he had no control over the patent, and could not be held responsible for what the assignees did with it. If anything be due the family of the inventor, there absolutely being no other mode of rendering the justice due, except by granting an extension of these patents, and after the extension if it shall appear that the reissued patents obtained by the assignees are wrong in any respect, they may be surrendered and reissued correctly, and then justice be done between the inventor's family and the public. These are views which I cannot recollect that I entertained at the hearing, nor can I recollect it if they were urged by the counsel for the extension upon my consideration.

I have lately read carefully the original patent, and find much more in it to support the reissued patents than I did when the case was decided.

These views, which I think did influence and control my decision, were so strong and decided that I did not give any weight at all to some of the arguments above suggested, and not a sufficient weight to others of them.

Entertaining these views, I am of opinion that Hunt's widow and son should have another hearing before the Patent Office, *as neither the law nor the evidence was properly considered upon the former hearing.*

Very respectfully,

A. M. STOUT.

Hon. THOMAS A. JENCKES,
Chairman Committee on Patents, House of Representatives, Washington, D. C.

These facts and circumstances connected with this case would indicate the propriety, perhaps, of granting the relief asked for by the petitioners. But it further appears to the committee that Mr. Stout, at the time he rendered his decision in this case, had no authority to make it, and that his decision was, in fact, a nullity.

In the 3d section of an act entitled "An act to authorize the tempo-

rary supplying of vacancies in the executive department," approved July 23, 1868, it is provided as follows:

That, in case of the death, resignation, absence, or sickness of the Commissioner of Patents, the duties of said Commissioner, until a successor be appointed, or such absence or sickness shall cease, shall devolve on the examiner-in-chief in said office oldest in length of commission.

The Commissioner of Patents, Mr. Theaker, had resigned some time prior to the 24th of July, 1868. His successor was not appointed until some time subsequent to July 24, 1868. From the time of the resignation of Mr. Theaker until the 23d July, 1868, when the act aforesaid was approved, Mr. Stout, being chief clerk, was by the then existing law authorized to discharge the duties of Commissioner of Patents. But, on the 23d of July, 1868, under the operation of the aforesaid act, his authority to act as Commissioner ceased, and such authority was transferred to the examiner-in-chief "oldest in length of commission." Therefore, in the opinion of the committee, the decision made in this case by Mr. Stout, chief clerk, acting as Commissioner, which was made on the 24th July, 1868, the day after the act aforesaid took effect, was unauthorized, null, and void.

The committee are of the opinion that the petitioners are entitled to a rehearing of their case before the Commissioner of Patents. They therefore report the accompanying bill, and recommend its passage.

41ST CONGRESS, 1st Session. | SENATE. | REPORT. No. 8.

IN THE SENATE OF THE UNITED STATES.

APRIL 6, 1869.

Mr. CRAGIN, from the Committee to Audit and Control the Contingent Expenses of the Senate, submitted the following

REPORT.

The Committee to Audit and Control the Contingent Expenses of the Senate, in compliance with a resolution of the Senate of the 20th of March, 1869, instructing them to "inquire into the mode of appointment and tenure of office of the subordinate officers of the Senate, and to report if any changes are desirable in the same," report:

That the subordinate officers of the Senate regularly employed under the Secretary of the Senate and Sergeant-at-arms respectively, are appointed and removed by those officers, under the following resolution of the Senate, passed July 17, 1854:

Resolved, That the several officers and others in the departments of the Secretary of the Senate and of the Sergeant-at-arms shall be appointed and removed from office by those officers respectively, as heretofore; but, when made during the session of the Senate, any such removal to be first approved by the President of the Senate, on reasons to be assigned therefor in writing by the officer making the removal; and when in the recess, such reason, in writing, to be laid before the President of the Senate on the first day of the succeeding session, and to be approved or disapproved by him.

The following resolution, passed at the same date, regulates to some extent the appointment and tenure of office of the pages, who are appointed by the Sergeant-at-arms:

Resolved, That it shall be the duty of the Sergeant-at-arms to classify the pages of the Senate so that at the close of the present and each succeeding Congress, one-half the number shall be removed, and in no case shall a page be appointed younger than 13 years, or remain in office after the age of 17 years, or for a longer time than two Congresses or four years.

The persons employed on the heating and ventilating apparatus, the additional messengers, laborers in the folding room, and laborers around the Senate chamber and committee rooms, are employed by the Sergeant-at-arms, by real or supposed directions from this committee, as their services are required, and are subject to removal at any time.

This committee is satisfied that changes *are* desirable and necessary in the number of the employés not on the regular rolls.

The irregular force has largely increased within the past few years, which within the last year the committee has endeavored to reduce, but with little practical success. Near the close, however, of the last session of Congress the committee had taken measures to largely reduce the number of the subordinate officers employed without direct authority of law, or resolution of the Senate, as the labor and duties done by most of that class could and should be performed by those regularly employed, and to that end had given directions for the carrying out of the determination of the committee.

During the present session the committee have resolved upon still further reductions, which was carried into effect on the first day of the present month.

It is the firm purpose of the committee to materially curtail the expenditures for extra labor and miscellaneous items, and we need but the co-operation of the Senate to diminish the contingent expenses of the Senate during the next fiscal year more than $50,000.

In conclusion the committee would call the attention of the Senate to the many resolutions which are constantly introduced into this body for the payment of money from the contingent fund of the Senate; most of which find their principal, and in some cases only, support in precedents; and the committee ask that hereafter the Senate will resort to this mode of creating deficiencies only in extra and extreme cases.

41ST CONGRESS, 1st Session. | SENATE. | MIS. DOC. No. 1.

LIST OF COMMITTEES

OF

THE SENATE OF THE UNITED STATES

FOR THE

FIRST SESSION OF THE FORTY-FIRST CONGRESS.

MARCH 24, 1869.

STANDING COMMITTEES.

Foreign Relations.

Mr. Sumner, chairman.
Fessenden.
Cameron.
Harlan.
Morton.
Patterson.
Casserly.

Finance.

Mr. Sherman, chairman.
Williams.
Cattell.
Morrill.
Warner.
Fenton.
Bayard.

Appropriations.

Mr. Fessenden, chairman.
Grimes.
Wilson.
Cole.
Sprague.
Sawyer.
Stockton.

Commerce.

Mr. Chandler, chairman.
Corbett.
Kellogg.
Spencer.
Conkling.
Buckingham.
Vickers.

Manufactures.

Mr. Morton, chairman.
Yates.
Robertson.
Boreman.
McDonald.

Agriculture.

Mr. Cameron, chairman.
Robertson.
Tipton.
Gilbert.
McCreery.

Military Affairs.

Mr. Wilson, chairman.
Howard.
Cameron.
Morton.
Thayer.
Abbott.
Schurz.

Naval Affairs.

Mr. Grimes, chairman.
Anthony.
Cragin.
Nye.
Drake.
Scott.
Stockton.

Judiciary

Mr. Trumbull, chairman.
Stewart.
Edmunds.
Conkling.
Rice.
Carpenter.
Thurman.

Post Offices and Post Roads.

Mr. Ramsey, chairman.
Pomeroy.
McDonald.
Hamlin.
Cole.
Gilbert.
Thurman.

Public Lands.

Mr. Pomeroy, chairman.
Williams.
Tipton.
Osborn.
Warner.
Sprague.
Casserly.

Private Land Claims.

Mr. Williams, chairman.
Ferry.
Sawyer.
Kellogg.
Bayard.

Indian Affairs.

Mr. Harlan, chairman.
Ross.
Corbett.
Thayer.
Buckingham.
Pool.
Davis.

Pensions.

Mr. Edmunds, chairman.
Tipton.
Spencer.
Pratt.
Brownlow.
Schurz.
McCreery.

Revolutionary Claims.

Mr. Yates, chairman.
Pool.
Fowler.
Brownlow.
Saulsbury.

Claims.

Mr. Howe, chairman.
Willey.
Scott.
Sprague.
Robertson.
Pratt.
Davis.

District of Columbia.

Mr. Hamlin, chairman.
Patterson.
Sumner.
Rice.
Harris.
Pratt.
Vickers.

Patents.

Mr. Willey, chairman.
Ferry.
Carpenter.
Osborn.
Norton.

Public Buildings and Grounds.

Mr. Morrill, chairman.
Trumbull.
Ferry.
Cole.
Stockton.

Territories.

Mr. Nye, chairman.
Cragin.
McDonald.
Schurz.
Howard.
Boreman.
McCreery.

Pacific Railroad.

Mr. Howard, chairman.
Sherman.
Ramsey.
Stewart.
Wilson.
Harlan.
Drake.
Rice.
Abbott.
Fenton.
Scott.

Mines and Mining.

Mr. Stewart, chairman.
Chandler.
Anthony.
Yates.
Ross.
Saulsbury.
Fowler.

On the Revision of the Laws of the United States.

Mr. Conkling, chairman.
Sumner.
Carpenter.
Pool.
Bayard.

Education.

Mr. Drake, chairman.
Morrill.
Sawyer.
Corbett.
Pomeroy.

To Audit and Control the Contingent Expenses of the Senate.

Mr. Cragin, chairman.
Edmunds.
Davis.

Printing.

Mr. Anthony, chairman.
Harris.
Casserly.

Library.

Mr. Cattell, chairman.
Howe.
Fessenden.

Enrolled Bills.

Mr. Thayer, chairman.
Patterson.
Abbott.

Engrossed Bills.

Mr. Buckingham, chairman.
Norton.

SELECT COMMITTEE ON REVISION OF THE RULES.

Mr. Anthony, chairman.
Pomeroy.
Edmunds.

SELECT COMMITTEE ON THE REMOVAL OF POLITICAL DISABILITIES.

Mr. Robertson, chairman.
Osborn.
Hamlin.
Howe.
Ferry.
Boreman.
Vickers.

JOINT SELECT COMMITTFE ON RETRENCHMENT.

Mr. Patterson, chairman.
Williams.
Schurz.
Thurman.

41ST CONGRESS, 1st Session. } SENATE. { MIS. DOC. No. 2.

MEMORIAL

OF THE

LEGISLATIVE ASSEMBLY OF NEW MEXICO,

PRAYING

A confirmation of the Rio Grande land grant to the actual settlers who have occupied, improved, and lived upon said land for the last ten years, and against the confirmation of an old land grant, the conditions of which have not been complied with.

MARCH 21, 1868.—Referred to the Committee on Private Land Claims.
MARCH 8, 1869.—Referred to the Committee on Private Land Claims and ordered to be printed.

To the honorable the Congress of the United States:

Your memorialists, the council of the legislative assembly of the Territory of New Mexico, would most respectfully represent:

That we are informed that Brevet Brigadier General James H. Carleton, Brevet Colonel N. H. Davis, Brevet Lieutenant Colonel A. B. Carey, and others, have surreptitiously purchased from a few poor and ignorant persons in Taos county, New Mexico, an old Spanish grant, commonly called the "Rio Grande grant," which said persons are supposed to own, predicated upon a grant made over 100 years ago; and that said officers have used their position in this country to obtain said grant for a sum less than $200, and, we are now informed, are expecting to have your honorable body confirm said grant.

Your memorialists would further represent that upon this grant there are now residing nearly 3,000 persons, many of whom, and their ancestors, have lived upon this land for nearly 100 years, and have improvements worth several hundred thousand dollars. These settlers deem it a great hardship to be compelled to leave their old homes for the purpose of enriching a few speculators, who were sent here by the government to protect them, and not to despoil them.

Your memorialists would therefore ask your honorable body to pass a law giving to the actual settlers, who have occupied, improved, and lived upon the land for the last 10 years, a title to the land so occupied by them, and not confirm an old land grant, the conditions of which have not been complied with by any person except the present actual settlers; and your memorialists ask in behalf of these settlers protection, and as in duty bound they will ever pray.

Resolved by the council of the legislative assembly of the Territory of New Mexico, That the honorable secretary of the Territory be required to forward a copy of the foregoing to the President of the Senate, the Speaker

of the House of Representatives, to his Excellency the President of the United States, to the Hon. Secretary of War, General U. S. Grant, and to our delegate in Congress.

MIGUEL E. PINO,
President of the Council.
FRANCISCO SALAZAR,
Chief Clerk.

41ST CONGRESS, 1st Session. | SENATE. | MIS. DOC. No. 3.

RESOLUTIONS

OF

THE LEGISLATURE OF KANSAS,

IN FAVOR OF

The payment of the claims of citizens of that State for horses taken for the military service of the United States.

MARCH 8, 1869.—Referred to the Committee on Military Affairs and ordered to be printed.

Whereas during the war of the rebellion a great many horses, which were the private property of the enlisted men of the various regiments of Kansas cavalry volunteers, were, by authority of the laws of the United States, used in the military service of the government for periods ranging from one to three months after such lawful authority for retaining and using the said horses had ceased; and whereas the owners of said horses were, by the disbursing officers of the United States army, denied and refused pay after the authority of law for such use had ceased; and whereas such use after the expiration of such lawful authority was absolutely demanded by the necessities of the war, and enforced by military power; and whereas it is unjust that the owners of said horses should be refused pay for the use thereof: Therefore,

Be it resolved by the house of representatives, (the senate concurring,) That our representative be, and is hereby, requested, and our senators instructed to secure such legislation by Congress, immediately, as will insure the speedy adjustment and payment of the claims for the use of the horses as aforesaid.

Resolved, That the secretary of state is hereby requested to forward to our representative and each of our senators in Congress a copy of these resolutions.

Adopted by the house of representatives February 18, 1869.

HENRY C. OLNEY,
Chief Clerk.

Concurred in February 23, 1869, by the senate.

GEORGE C. CROWTHER,
Secretary of the Senate.

I, Thomas Moonlight, secretary of state, do hereby certify that the foregoing is a true and correct copy of the original on file in this office.

In testimony whereof I have subscribed my name and affixed the great seal of the State this 26th day of February, A. D. 1869.

[SEAL.]

THOMAS MOONLIGHT,
Secretary of State.

41ST CONGRESS, 1st Session. | SENATE. | MIS. DOC. No. 4.

RESOLUTION

OF THE

LEGISLATURE OF MASSACHUSETTS,

IN FAVOR OF

The passage of the bill to establish a line of American steamships between the United States and Europe.

MARCH 9, 1869.—Referred to the Committee on Commerce and ordered to be printed.

COMMONWEALTH OF MASSACHUSETTS—IN THE YEAR ONE THOUSAND EIGHT HUNDRED AND SIXTY-NINE.

RESOLVES in relation to American Steamship Companies.

Resolved, as the sense of the legislature of Massachusetts, That the bill introduced into the Senate of the United States by our distinguished senator the Honorable Henry Wilson, entitled a bill to establish a line of American steamships between the United States of America and Europe, should, at once, be passed; and that our senators and representatives in Congress be requested to use all their influence to secure the passage of said bill at the present session.

Resolved, That his excellency the governor be requested to transmit a copy of these resolutions to each of our senators and representatives in Congress.

SENATE, *February* 24, 1869.

Passed.
Sent down for concurrence.

S. N. GIFFORD, *Clerk.*

HOUSE OF REPRESENTATIVES, *February* 24, 1869.

Passed in concurrence.

W. S. ROBINSON, *Clerk.*

41ST CONGRESS, 1st Session. | SENATE. | MIS. DOC. No. 5.

RESOLUTION

OF THE

LEGISLATURE OF NORTH CAROLINA,

RATIFYING

The fifteenth article of amendment to the Constitution of the United States.

MARCH 11, 1869.—Ordered to lie on the table and be printed.

A JOINT RESOLUTION ratifying the proposed amendment to the Constitution of the United States of America, styled "Article fifteen."

Whereas the general assembly has received official notification of the passage by both houses of the 40th Congress of the United States of the following proposition to amend the Constitution of the United States, by a constitutional majority of two-thirds thereof, in words, to wit:

A RESOLUTION proposing an amendment to the Constitution of the United States.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, (two-thirds of both houses concurring,) That the following article be proposed to the legislatures of the several States as an amendment to the Constitution of the United States, which, when ratified by three-fourths of said legislatures, shall be valid as part of the Constitution, namely:

ARTICLE XV.

SECTION 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States, or by any State, on account of race, color, or previous condition of servitude.

SEC. 2. The Congress shall have power to enforce this article by appropriate legislation.

Therefore,

Be it resolved by the general assembly of North Carolina, That the said amendment to the Constitution of the United States be, and the same is hereby, ratified by the general assembly of North Carolina.

Resolved, That certified copies of the foregoing preamble and resolution be forwarded by the governor to the President of the United States, to the presiding officer of the United States Senate and the Speaker of the United States House of Representatives.

In general assembly, read three times, and ratified this 5th day of March, A. D. 1869.

JO. W. HOLDEN,
Speaker of the House.
TOD. R. CALDWELL,
President of the Senate.

STATE OF NORTH CAROLINA, OFFICE SECRETARY OF STATE,
Raleigh, N. C., March 5, 1869.

I, Henry J. Menninger, secretary of state, hereby certify that the foregoing is a true copy of the original resolution on file in this office.

[SEAL.]

H. J. MENNINGER,
Secretary of State.

41ST CONGRESS, 1st Session. | SENATE. | MIS. DOC. No. 6.

PETITION

OF

DAVID J. MILLARD,

PRAYING

Payment of balance due him on a contract with the government for the manufacture of sabres.

MARCH 11, 1869.—Referred to the Committee on Claims and ordered to be printed.

To the honorable the Congress of the United States:

Your petitioner, David J. Millard, of Clayville, in the State of New York, respectfully represents that in 1861 he was engaged at Clayville, and had been for many years, in the manufacture of scythes and other agricultural implements, and that while so engaged, and on or about the 13th day of December of that year, the War Department, through the Bureau of Ordnance, offered your petitioner an order to manufacture for the United States government 10,000 cavalry sabres of the regular United States pattern, at the rate of $8 50 for each sabre complete, delivered at Clayville; and 500 to be delivered in ninety days and 2,000 each month thereafter until the 10,000 should be delivered.

They were to be paid for as fast as delivered at Clayville. That said offer was in writing, and a copy thereof is hereto annexed, marked A.

That at the time that offer was made it was well known there was only one establishment in the United States where such sabres had been manufactured; that there was no machinery in market which was required for the manufacture of sabres, and there was then but one place in the United States where it could be procured to be manufactured.

Your petitioner accepted said offer in good faith, and immediately commenced making preparations to manufacture the sabres, and continued diligently in the preparation and manufacture of the sabres until the whole 10,000 first-quality sabres were made, delivered to, and accepted by the government.

That the last of said sabres were delivered to and accepted in January, 1863.

That your petitioner succeeded in making a first-quality sabre, as was admitted by the government inspector, as appears by his letter hereto annexed, marked B, and has never to your petitioner's knowledge been questioned.

That said sabres were delivered and accepted from time to time in parcels, but that nothing was paid your petitioner for or on account of said sabres until about three months after they were all delivered and accepted by the government. That the government has not paid your petitioner what the sabres came to at $8 50 a piece into $15,000, exclusive of interest; that said sabres at $8 50 a piece come to $85,000, and there has been paid your petitioner for the sabres only $70,000.

That an account stating when the sabres were delivered, and what has been paid thereon, and containing a computation of interest to February 1, 1869, is hereto annexed, marked C, from which it appears there was due your petitioner $24,686 40.

That at the time said offer was made to your petitioner the government was paying $8 50 to Ames & Co. for making such sabres, and they could not then be obtained for any less price.

Those which your petitioner delivered to the government were far superior to foreign sabres, or any that could be obtained in market.

That after your petitioner accepted said offer, and while he was engaged in manufacturing said sabres, the price of laborers and materials very much advanced.

That it cost your petitioner upwards of $10,000 to obtain the required new machinery, and adapt his works to manufacture the sabres.

That the only reason which has been given for not paying your petitioner the whole $85,000 is that your petitioner did not commence delivering the sabres as early as the time named in said offer.

There never has been any pretence that your petitioner did not take the contract and immediately thereafter enter upon its execution in good faith, or that he was not diligently engaged in the performance of it until it was completed.

There was some delay in the commencement to deliver the sabres, but it was owing to circumstances over which your petitioner had no control, and which show the government ought to waive the delay and not bind your petitioner with such serious loss by reason of it.

That immediately after your petitioner made the contract he commenced looking after the machinery required to adapt his works to make the sabres, and he found there was no such machinery in market, and there was no place in the United States where it was built, and for that reason he was obliged to procure new patterns to be made and the machinery thereafter to be built.

That in said month of December he contracted with B. B. Hill, a machinist in Chicopee, Massachusetts, to get up the patterns and build the machinery without delay, and he contracted that it should be ready by

That he commenced the construction of said machinery and shipped on portions of it as fast as completed, but he was delayed, as he alleged and has sworn, by reason of low water in an exceedingly dry winter, so that he did not deliver the machinery until in March, 1862, as appears by the machinist's affidavit hereto annexed, marked D.

Your petitioner could not obtain admittance to the only manufactory where sabres were manufactured in the United States, or derive any assistance from them.

Your petitioner applied to the government for a sample of the sabre to be made, and he was delayed 20 days before it was furnished to him.

That in about the month of March an unusual freshet occurred at Clayville, which seriously tore up and damaged your petitioner's works which he had prepared to manufacture the sabres, and caused him much expense and delay to repair and restore to full operation.

That the government requires the inspector to inspect the sabres in pieces in the process of manufacture, and that it is not safe or prudent to proceed without an inspector.

That no inspector having been sent to inspect your petitioner's work, on the 10th of March, 1862, your petitioner wrote to the War Department to send on an inspector to inspect his work, and none was sent on until May 7, 1862.

That before the inspector came your petitioner had commenced making a large number of sabres after the sample which the War Department had furnished him to make the sabres after, and when the inspector came in May he rejected all the sabres your petitioner had in progress of completion, which had been made after the sample the government furnished your petitioner to make from, because, as he alleged, they did not have the right sweep.

He did not reject them because they did not conform to the sample, but he rejected the sample also, and required your petitioner to make a sample after his direction to make by, which was done.

That the work so rejected by the said inspector involved a loss to your petitioner of $2,000.

That during the progress of the work several inspectors were sent, and one of the first who was sent was evidently incompetent and a very intemperate man, and embarrassed and delayed your petitioner in his work.

Your petitioner required, to finish the sabres, a very large kind of grindstone of a particular quality, which are brought from Nova Scotia, which did not draw the temper of the sabre.

That your petitioner ordered eight of the stones through J. F. Whitney & Co., dealers in grindstones, in New York city, in May, 1862; none of the stones could be found in New York, and they ordered their corresponding house in Boston, Sprague, Soule & Co., to purchase the stones, and they were unable to find but eight, which the house of Lombard & Co. had, and those weighing about 20 tons they purchased them for your petitioner. Before they were shipped, E. S. Allen, the agent of the United States armory at Springfield, applied to Lombard & Co. for the stones, and was informed they were sold, and he said the demand of the government was so urgent for them he felt justified in taking them without the owner's consent, and this compelled them to let him have them for the government, as will appear by the certificates hereto annexed, marked E.

That by reason of the government thus seizing your petitioner's grindstones he was delayed some weeks before he was able to procure others.

That when your petitioner took said contract the manufacture of sabres in this country was in its infancy. There was hardly any skilled labor to be obtained, and the government advertised for additional sabres in the spring of 1862, which increased the difficulty in obtaining the right kind of hands.

That when your petitioner saw that for the reasons aforesaid he should not be able to manufacture in time the first 500 sabres to be delivered, he purchased 600 sabres at the price at which he was to get for the purpose of furnishing them to be delivered at that time, and on the 13th of March, 1862, wrote the Secretary of War the unexpected difficulties he had had to encounter would prevent his delivering the first 500 of his own manufacture, but that he had purchased 600 sabres to be ready for the delivery, and desired to be informed by him how he was to procure an inspector; and in reply to this letter, on the 1st of April, the Assistant Secretary of War replied that no sabres but your petitioner's own manufacture would be received, and saying nothing of the inspector, but stating, "Should you fail in the delivery of the arms at the time specified in your contract, the reasons therefor will be considered by the department."

Your petitioner understood this letter to mean that if he was in good faith, and with reasonable diligence at work in the performance of the

contract, and he had good reasons for the delay, no advantage would be taken of it.

That your petitioner submitted to a large loss in the purchase of the 600 sabres, and pressed on the manufacture of the sabres.

That in the spring of 1862 the Secretary of War appointed a commission, consisting of Messrs. Holt and Owen, and required all those having contracts to appear before the commission to have the state of the contract and condition of the work examined into.

That your petitioner appeared before such commission and showed that he was actively engaged in performing the contract; had made large outlays for materials and labor, and had incurred large expense in preparing to perform the contract.

That commission reported that the first 500 sabres were to be delivered March 13, 1862; that your petitioner's factory not then being in complete operation, he purchased, as above stated, to make the delivery, but the department refused to receive the purchased sabres.

That, by the terms of the order given your petitioner, his failure to make the first delivery as stipulated released the government from all obligation to receive the 10,000 sabres; but that as the extraordinary expenses of a new business must be considered in a measure, and as your petitioner had shown the commission that he entered upon it in good faith, and with the expectation of realizing a fair profit, and has been zealously at work to fulfil his undertaking, that your petitioner be permitted to fill the required order at the rate of $7 for each sabre.

That a copy of the report was sent your petitioner sometime in May, but no further action was taken upon it, and no notice or decision or action of the War Department on the report or contract has been communicated to your petitioner.

That at the time said report was made your petitioner had proceeded so far in the execution of the contract he could not stop without pecuniary ruin. He must go on or be utterly ruined. Your petitioner continued on in the manufacture of the sabres, with the aid of his friends, until his contract was completed, and the whole 10,000 sabres were delivered to and accepted by the government, in the reasonable expectation the government would deal fairly with him, and would not, in the end, refuse to pay him, at least, the price it voluntarily offered to pay him for the sabres.

Your petitioner never would have undertaken to make the sabres at a less price than the government offered.

That this contract is the only one your petitioner had for the government, and he took it at a time when the War Department could find no one to furnish the sabres government required, when little had been done in this country in the manufacture of sabres, and when the department knew great difficulties and embarrassments were to be encountered in commencing the manufacture.

The commencement of the manufacture by your petitioner, by increasing the competition and showing that others could produce them, had the effect to cheapen the price.

The price at which sabres of foreign manufacture could be purchased at was no guide as to the value of such as your petitioner was required to and did manufacture. The foreign article was conceded to be very much inferior.

Your petitioner submits he has good reasons to complain of the nonperformance of the contract by the government in a matter of serious concern to him.

On a fair construction of the contract your petitioner was to be paid for sabres on each delivery, or so fast as delivered.

Neither your petitioner or the government had any idea the sabres were all to be made and delivered before your petitioner was to receive any pay. It would require large capital and credit, and no inconsiderable loss, to perform contracts in that way of such amounts.

Sabres were delivered by your petitioner, and accepted and used by the government, and bills for them properly vouched remained unpaid for a year. In fact, no payment or advance was made on the contract, or for any of the sabres, until three months after the last of the sabres were delivered and accepted. A proceeding vastly more serious to your petitioner than his omission to deliver the first 500 sabres of his own manufacture, instead of those made by other factories, was to the government.

The omission to pay, as it was understood the government would pay, were it not for the extraordinary aid your petitioner was able to procure, would have ruined him.

Had the government extended reasonable encouragement to your petitioner, he would have made a fair business profit at the price named in the original offer, and no more; as it is, your petitioner has made nothing; been greatly annoyed and embarrassed, and suffered considerable loss.

Your petitioner respectfully submits that the payment of the price the government voluntarily offered him, and for which he undertook to do the work under the circumstances, ought fairly to be made, and is not unreasonable to expect.

Your petitioner therefore prays your honorable body will, in the customary mode, provide for the payment to him of the said $24,686 43, the balance which appears to be due him by said account, Schedule C, and the interest thereon from February 1, 1869, together with a reasonable compensation for the damages sustained by your petitioner for the seizure by the government of the grindstones purchased by him as herein stated.

DAVID J. MILLARD.

A.

ORDNANCE OFFICE,
Washington, December 13, 1861.

SIR: By direction of the Secretary of War I offer you an order for 10,000 cavalry sabres, on the following terms and conditions. The sabres are to be of first quality, and are to be subject to the regular inspection by such inspectors as this department may designate for the purpose, and are to be of the regular United States pattern. None are to be received and paid for but such as pass inspection and are approved by the United States inspectors. They are to be delivered at Clayville, New York, as follows, viz: 500 in 90 days from this date, and 2,000 per month thereafter, until the whole 10,000 are delivered.

In case of any failure to deliver to the extent, and in or within the times specified, this department is to have authority to revoke and annul this order, so far as regards sabres remaining undelivered at the time of such failures. Payments are to be made in such funds as the Treasury Department may provide for each delivery, on certificates of inspection and receipt by the United States inspectors, at the rate of $8 50 for each sabre complete.

Please signify in writing your acceptance of this order on the terms and conditions herein stated.

Respectfully, your obedient servant,

JAS. W. RIPLEY,
Brevet General.

Mr. DAVID J. MILLARD,
Clayville, Oneida County, New York.

The above was accepted by letter

B.

OFFICE OF INSPECTOR OF CONTRACT ARMS,
NO. 77 EAST FOURTEENTH STREET,
New York, March 25, 1863.

DEAR SIR: I have received your note of the 21st inst., and am glad to bear evidence to your complete success in overcoming all obstacles in the manufacture of first-class sabres. During the last two or three inspections, the reports show that you had attained excellent results, producing good work with but small loss; and I have no doubt that you are well prepared to carry out with advantage a new contract, should the government need more sabres. Application should be made to the Chief of Ordnance and to the Secretary of War in this matter, as all orders and contracts are given through their offices.

Although I can exert no direct influence in your behalf, it is still your due to have all the benefit that may properly be claimed from the success shown to have been achieved by the results of my inspections at your factory.

Very respectfully, your obedient servant,

P. V. HAGNER,
Major Ordnance.

D. J. MILLARD, Esq.,
Clayville, New York.

C.

United States Ordnance Department, in account, D. J. Millard.

Date.	Article.	Interest.	Total.
July 31, 1862.....	To 1,350 light cavalry sabres, $8 50.....	.....	$11,475 00
	To 45 packing boxes.....	.....	112 50
	To freight to Utica, New York, cartage 15 cents per box.....	.....	6 75
March 10, 1863....	To seven months and 10 days' interest	$495 67	
September 8, 1862..	To 1,020 light cavalry sabres, $8 50.....	.....	8,670 00
	To 34 packing boxes, $2 50.....	.....	85 00
	To freight to Utica, New York, cartage 15 cents per box.....	.....	5 10
March 10, 1863....	To six months and 2 days' interest.....	309 96	
September 15, 1862.	To 1,020 light cavalry sabres, $8 50.....	.....	8,670 00
	To 34 packing boxes, $2 50.....	.....	85 00
	To freight to Utica, New York, cartage 15 cents per box	.....	5 10
March 10, 1863....	To five monthsand 25 days' interest.....	297 50	

United States Ordnance Department, &c.—Continued.

Date.	Article.	Interest	Total.
October 2, 1862....	To 1,020 light cavalry sabres, $8 50	.....	$8,670 00
	To 34 packing boxes, $2 50.....	.....	85 00
	To freight to Utica, New York, cartage 15 cents per box.....	.....	5 10
March 10, 1863....	To five months and 8 days' interest...	$268 94	
October 23, 1862...	To 1,020 light cavalry sabres, $8 50.....	.....	8,670 00
	To 34 packing boxes, $2 50.....	.....	85 00
	To freight to Utica, New York, cartage 15 cents per box.....	.....	5 10
March 10, 1863....	To four months and 17 days' interest.....	232 96	
November 8, 1862..	To 1,020 light cavalry sabres, $8 50	.....	8,670 00
	To 34 packing boxes, $2 50.....	.....	85 00
	To freight to Utica, New York, cartage 15 cents per box.....	.....	5 10
March 10, 1863....	To 4 months and 2 days' interest.....	207 75	
November 29, 1862.	To 1,020 light cavalry sabres, $8 50.....	.....	8,670 00
	To 34 packing boxes, $2 50.....	.....	85 00
	To freight to Utica, New York, cartage 15 cents per box.....	.....	5 10
March 10, 1863....	To three months and 11 days' interest.....	171 78	
December 22, 1862.	To 1,020 light cavalry sabres, $8 50.....	.....	8,670 00
	To 34 packing boxes, $2 50.....	.....	85 00
	To freight to Utica, New York, cartage 15 cents per box.....	.....	5 10
March 10, 1863....	To two months and 18 days' interest	132 44	
January 23, 1863..	To 1,511 light cavalry sabres, $8 50.....	.....	12,843 50
	To 51 packing boxes, $2 50.....	.....	127 50
	To freight to Utica, New York, cartage 15 cents per box	.....	7 65
March 10	To one month and 17 days' interest	118 02	
		2,236 03	
	Amount of account.....	.....	85,893 60
March 10, 1863....	Amount of interest to date	.....	2,235 03
		.....	88,128 63
March 10, 1863....	Credit by cash.....	.....	70,892 10
	Balance due.....	.....	17,236 53
January 1, 1864...	To nine months and 20 days' interest on balance.	.....	971 04
		.....	18,207 57
	Interest to February 1, 1869	.....	6,478 86
			24,686 43

D.

B. B. Hill, machinist, Springfield, Massachusetts, being duly sworn, says that December, 1861, I contracted with D. J. Millard, of Clayville, New York, to build sword machinery for the manufacture of swords and scabbards, in a given time, and in consequence of low water during an exceedingly cold and dry winter, I was unable to run my machinery as usual, and could not get it done in the time agreed upon, and did not get it out until some time after it was due. The machinery was difficult to build for the reason that the patterns had to be made, as there was no place in the United States, within my knowledge, where such machinery was built or the patterns could be obtained. I forwarded portions of

the machinery as fast as completed by express, and used my utmost endeavors to get it out within the time agreed upon, but failed for reasons stated above.

B. B. HILL.

COMMONWEALTH OF MASSACHUSETTS, *Hampden, ss:*

Then the above-named B. B. Hill appeared and made oath to the above statement before me.

T. M. BROWN,
Justice of Peace.

OCTOBER 22, 1868.

E.

This is to certify that in the month of May, 1862, we had an order from D. J. Millard, of Clayville, New York, for some large Nova Scotia grindstones of a particular quarry, known as "Lower Cove." That at the time we had no large grindstones of the quality, and there were none of the kind in New York suitable for the purpose for which he wanted them, which we understood at the time to be for making swords. That we then made application, through our agent, for some in Boston, and he selected and bought for us eight (8) grindstones, all that could be found at the time in Boston of suitable size and quality. That after the said grindstones were purchased for us to fill the order of D. J. Millard, and before they were shipped from Boston, the superintendent or agent of the United States armory at Springfield, Massachusetts, (E. S. Allen,) saw the grindstones, and was told they were sold. He said: "I must have them if they are sold, or the government works will be stopped, and the demand is so urgent that I shall feel justified in taking them without your (the owner's) consent." That on this declaration of the said superintendent or agent of the said Springfield armory, the grindstones were delivered to him, or he took them, and they were sent to the government works at Springfield, Massachusetts; and in consequence we failed to fill the order of D. J. Millard, as we knew of no other grindstones of the kind in the country at that time.

J. F. WHITNEY & CO.

STATE OF NEW YORK, *ss:*

Personally appeared before me J. F. Whitney, of the firm of J. F. Whitney & Co., to me known, who, being duly sworn, doth depose and say that the foregoing statement in all its particulars is true and correct to the best of his knowledge and belief.

In testimony whereof I have hereunto set my hand and seal the 9th day of April, 1868.

[SEAL.]

EDWARD A. BALL,
Notary Public.

I, Edward Whitney, a member of the firm of Sprague, Soule, & Co., of Boston, do certify that in the month of May, 1862, I purchased of Lombard & Co., of Boston, eight water grindstones for J. F. Whitney & Co., of New York, to be shipped to them on an order from D. J. Millard, of

Clayville, New York; and after so purchasing, and before I had an opportunity to ship the same to New York to J. F. Whitney & Co., E. S. Allen, esq., master armorer of the Springfield, (Massachusetts,) United States armory, applied to said Lombard & Co. to purchase of them some water grindstones, and seeing these eight grindstones, said "he must have them if they were sold, or the government works (at Springfield) would be stopped, and the demand was so urgent he should feel justified in taking the stones without any one's consent," and thereupon did so take them.

EDWARD WHITNEY.

STATE OF MASSACHUSETTS, *County of Suffolk, City of Boston, ss:*

Subscribed and sworn to this eighth day of April, A. D. eighteen hundred and sixty-eight, before me.

CHARLES B. E. ADAMS,
Commissioner of the State of New York.

MEMORIAL

OF

OLIVER EVANS WOODS,

SUGGESTING

A plan for the safe delivery of letters.

MARCH 11, 1869.—Referred to the Committee on Post Offices and Post Roads and ordered to be printed.

To the honorable the Senate and House of Representatives of the United States:

Your memorialist, who is a citizen of the United States, domiciled in the State of Pennsylvania, respectfully representeth that in the annual report of the postal service for the fiscal year ending June 30, 1868, it is declared that there is "an extraordinary discrepancy between the proportion of dead letters received from Europe and the proportion returned from the United States to European countries." The report further declares that "the geographical extent of the United States and Territories, as yet largely unsettled, and the constant arrival of emigrants in search of new homes in remote regions, and the continual changing of places of abode in a sparsely settled country, all operate to increase the difficulty in the delivery of foreign letters."

Your memorialist would now direct attention to the fact that in the annual report of the postal service for the fiscal year ending June 30, 1859, it is declared that the "migratory habits of the people must also be considered among the prominent causes for the accumulation of dead letters, more particularly in the western or newer portions of the country."

Owing to the above and other causes, the proportion of dead letters in the United States is enormously in excess of those of any other government, and this, too, notwithstanding the many millions of public money in excess of the postal revenue annually expended by the United States to maintain an efficient postal system.

Your memorialist will now respectfully submit a plan whereby not only the grave evil of dead letters, as far as the same is caused by the "migratory habits of the people in the western or newer portions of the country," will be almost uprooted, but additional mail facilities will be given, capable of rendering to our people postal services of a new and important character.

PLAN.

I propose that letters which have lain —— weeks uncalled for in post offices in any of our new States and Territories shall be sent to some point within the State or Territory, and an alphabetical list be made of the addresses on the letters thus collected, the list to be printed, and

calling it the "Suspended Letter List," (or any other term that may be selected,) and send a copy, or copies thereof, to each and every post office in the State or Territory, to be conspicuously posted thereat, with notice to all whom it may concern that unless letters thus published are demanded in —— weeks, that they will then be considered as dead, and disposed of in accordance with law. If the foregoing plan be adopted, a "continual changing of places of abode" can be made by persons within the State or Territory in which they reside, and yet at the nearest post office each individual can obtain information of, and be instructed how to get, all letters intended for him. An examination of the "list" would also disclose if letters that he had mailed to other persons within the Territory had been promptly received; for if not, the letters would in due time appear published in the list. Again, suppose the suspended letter list in operation in Nevada, and it is wished to communicate with Robert C. Allen, who formerly resided in St. Paul, Minnesota, but of whose present location nothing whatever is known except that he is *somewhere* in the State of Nevada. In this case address the letter to

Robert C. Allen,
(Late of St. Paul, Minn.)
Somewhere in Nevada.

Letters thus addressed would be sent direct to the suspended letter list for Nevada, forthwith entered thereon, and hence by the next issue thereof information would be given at each and every post office in Nevada that a letter awaits "Robert C. Allen, late of St. Paul, Minnesota," when he demands the same through the postmaster nearest his present location; hence prompt letter delivery could be had under circumstances that heretofore would have been considered impossible.

I have thus, without going into more detail, given a description of a plan to deliver letters, the feasibility and efficacy of which I practically demonstrated on the Pacific coast over 12 years ago by means of an experimental device maintained at my own expense, and I speak from experience when I declare that the suspended letter list of a State or Territory can be maintained at a cost not exceeding that of a county town newspaper; and where several sparsely settled States and Territories are grouped to form the field of operation of the one and same list, the expense would be proportionably reduced. In short, it would be difficult to devise a more inexpensive plan for overcoming the hitherto considered insurmountable difficulties to efficient mail delivery, caused by the "continual changing of places of abode," and the "migratory habits of the people, particularly in the western or newer portions of the country." Neither directly, or indirectly does the plan interfere with existing postal devices for letter delivery, but it takes hold of and delivers letters that otherwise would certainly be sent to the dead-letter office. The operation of the list can be suspended, or, if need be, abolished, at a day's notice should the same be demanded.

Citizens intrust letters to the mails for *safe delivery*, and if it is the aim of the postal service of the United States to accomplish the purpose for which citizens intrust letters to its care, it will follow that *every dollar* of the public money expended on the transportation and handling of letters that become "dead" is so much public money fruitlessly expended, for surely all will regard as a fruitless expenditure the time, labor, and money devoted by citizens of this government to the writing and mailing of the *millions* of dead letters annually sent to the dead-letter office of the United States; and who can estimate the inconveniences and the bitter disappointments caused by the non-delivery of those letters?

While I believe that the benefits of my plan can be widely extended, nevertheless, my present purpose is only to introduce it in those new States and Territories where it is most needed, there to be perfected in its details, and from thence to be extended in its operation to meet the requirements of the public service.

If it be wise to maintain long and expensive routes for *letter transportation* in the region indicated, surely it would be wiser to employ an inexpensive device whereby the *safe delivery* of the letters thus transported can be assured.

The suspended letter list may be regarded as a postal pioneer, demanded by and suited to the wants and occupations of the people of our new States and Territories. It will accomplish much more for them, and all who mail letters to them, than the ordinary advertised letter-lists do for the denizens of our cities. It will extend to our people new and important mail facilities, that by increasing the number of letters mailed will act favorably on the postal revenue. It is a fact that Englishmen average per capita twice more letters per annum than Americans. If Americans mailed proportionably as many letters as Englishmen, the postal revenue would be millions in excess instead of millions behind the postal expenditures. A modification of my plan can, with good results, be employed to secure the safe delivery of letters sent here from foreign countries.

In 1852 Postmaster General Hubbard examined and approved my scheme, and the 32d Congress added the 5th section to the Post Office appropriation bill, approved March 3, 1853, to aid an experiment which, mainly at my expense, I proposed to make on the Pacific coast to test the feasibility of my project. Mr. Hubbard's term of office expired in March, 1853, and the succeeding Postmaster General appeared to view the existing facilities for letter delivery on the Pacific coast to be sufficient, and up to March 5, 1856, refused to grant the trial, and then only upon the conditions that the department was not "in any way, directly or indirectly, to be subjected to any expense in putting in operation or carrying out the plan proposed." Meanwhile the enormous accumulation of dead letters on the Pacific coast caused government to establish in San Francisco *a branch dead-letter office.* This fact, together with the warm approval given my project by Californians, determined me to assume the entire labor and expense of the experiment, which resulted in the marked and conclusive demonstration of the practicability of my conception, and that if put fully to work it would secure the safe delivery of tens of thousands of letters that otherwise would be destroyed. The result was made known to the department, but it declined to reccommend to Congress the legislation requisite to put the plan to work, and the destruction of letters on the Pacific coast continued without abatement.

In January, 1858, the Governor of California depicted, in a special message to the legislature of that State, the important postal benefits the adoption of my plan would, in his opinion, confer on the people of the Pacific coast. The message stated that

The number of dead letters consumed every quarter in San Francisco amounts to some 25,000. A "Suspended List," such as Mr. Woods proposes, would certainly save a large proportion of those letters from destruction, and at a very small expense to the department.

In 1859, the Hon. Jacob Collamer, formerly Postmaster General, examined and approved my project, and to aid its adoption introduced the resolution on postal affairs adopted by the United States Senate on March 9, 1859. Through his direct and indirect co-operation two parts of my scheme were eventually put to work, to wit, the plan of returns adopted in 1859, and the device for facilitating the return of undelivered letters, adopted through an act of Congress in 1860. By the first, the

mode of making returns to the dead-letter office was revolutionized and the operations of that office greatly improved; and the second, which had been unqualifiedly condemned by the department, has since its enforcement by Congress operated so advantageously on public and private interests that in the Post Office report for 1867 it is ranked among the most *useful and important* of postal arrangements in use, and the report states that 50,000,000 of letters endorsed in accordance with the plan had that year alone passed through the mails.

Since 1860 I have not urged my plans. But the vast mineral region in the interior of the continent has opened such an extended and important field of usefulness for my project that I have thus renewed my efforts, and I trust that the eminent success that has attended those of my postal devices now in public use will dispose your honorable bodies to carefully consider my plan for a suspended letter list, and if it be found deserving, to grant the legislation requisite to put it to public use, and thus prevent as far as possible the accumulation of dead letters from the "continual changing of places of abode," and the "migratory habits of the people in the western or newer portions of the country."

I repeat, that the cost to maintain the list in a State or Territory cannot exceed (and in my opinion will be much below) that of an ordinary county town newspaper. It will extend to our people new and important mail facilities that will accomplish prompt letter delivery under circumstances where heretofore letter delivery would have been thought impossible; and I again submit that if it be wise to maintain long and expensive routes for letter transportation in our new States and Territories, surely it would be wiser to employ an inexpensive device whereby the safe delivery of the letters thus transported can be assured.

All of which is respectfully submitted by

OLIVER EVANS WOODS.

41ST CONGRESS, 1st Session. | SENATE. | MIS. DOC. No. 8.

LETTER

FROM

THE SECRETARY OF WAR,

TRANSMITTING

Report of chief of engineers relative to guaranteeing the payment of certain bonds to be issued by the States of Louisiana, Arkansas, and Mississippi for the purpose of building and repairing the levees in said States.

MARCH 15, 1869.—Ordered to be printed, to accompany bill S. No. 121.

WAR DEPARTMENT,
February 20, 1869.

The Secretary of War has the honor to return to the Committee on Commerce of the United States Senate the bill to guarantee the payment of certain State bonds to be issued for the purpose of building and repairing the levees of the Mississippi, and to invite attention to the accompanying report of the chief of engineers upon the subject, which is by him recommended to be printed.

J. M. SCHOFIELD,
Secretary of War.

IN THE SENATE OF THE UNITED STATES.

JANUARY 18, 1869.

A BILL to guarantee the payment of certain bonds to be issued under the authority of the governments of the States of Louisiana, Arkansas, and Mississippi for the purpose of building and repairing the levees in said States.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That whenever the State of Louisiana shall provide for constructing or repairing the levees of said State, with a view of protecting from overflow the alluvial lands therein, and for that purpose shall appoint two levee commissioners, who, together with two others to be selected from the engineer corps of the United States army by the Secretary of War, shall constitute a board, a majority of whom shall have authority to cause said work to be done at such places as may be recommended by a majority of them, subject, however, to the supervising control of the Secretary of War; and shall further cause registered bonds of said State, not exceeding six million dollars in amount, payable in not less than ten nor more than thirty years from

date, bearing not more than six per centum interest per annum, payable semi-annually at the office of the assistant treasurer of the United States in the city of New York, to be issued and placed in the hands of said commissioners, to be sold at a price not less than par, and the proceeds to be expended under the superintendence of said commissioners in the construction and repair of said works; then the United States to guarantee the payment of the principal and interest of said bonds in the manner herein stated and subject to the conditions hereinafter provided:

First. That said State shall enact a law authorizing and requiring the levy and collection of a sufficient tax for the punctual payment of the semi-annual interest of all said bonds, which law should be irrepealable until the principal and interest on all said bonds are fully paid.

Second. That said board of commissioners shall certify to the Secretary of the Treasury the sufficiency of said tax to meet said interest as aforesaid.

Third. That the said State shall transfer and convey to the United States all the lands known as swamp lands belonging to said State; all which lands shall be held by the United States as security for their guarantee of the payment of the principal and interest of said bonds as hereinafter provided.

Fourth. When the last above-mentioned three conditions shall have been fully complied with said board of commissioners shall present all said bonds to the Secretary of the Treasury, who shall thereupon endorse each bond over his official signature as follows, to wit: "The United States guarantees the payment of the principal and interest of this bond."

SEC. 2. *And be it further enacted*, That the said board of commissioners shall cause said lands to be appraised at an average price not less in the aggregate than the total amount of the principal of the bonds, below which price none of said lands shall be sold: *Provided*, That none of said lands shall be saleable for money, but only for said bonds at par; whereupon, and upon the cancellation of said bonds to the extent in each case of such purchase, said commissioners shall issue a certificate in each case in favor of the purchaser, upon the filing of which certificate and the said bond so cancelled with the Commissioner of the General Land Office, in the manner now provided by law, the Commissioner of the General Land Office shall cause a patent to be issued to the purchaser for said lands, free from said mortgage or incumbrance.

SEC. 3. *And be it further enacted*, That in case of failure by the State to pay the interest on said bonds, or any part thereof, as it shall mature, or to pay the principal thereof when they shall become due, the right of the State to redeem said lands shall become forfeited, and Congress may provide for the sale or disposal of the same, or any part thereof, for said bonds at par as aforesaid; and should any surplus of said lands remain unsold after the full payment of the principal and interest of all said bonds, then and in that case said surplus shall become the property of the State of Louisiana, to be disposed of as said State may provide by law.

SEC. 4. *And be it further enacted*, That all the provisions of this act be, and the same are hereby, extended in all respects whatsoever to each of the States, respectively, of Arkansas and Mississippi, and subject to all the conditions and limitations herein named: *Provided*, That only the amount of bonds to be issued by each of said States, and guaranteed by the United States, shall be four millions of dollars.

HEADQUARTERS CORPS OF ENGINEERS,
Washington, D. C., February 19, 1869.

GENERAL: In reply to the communication of the chairman of the Committee on Commerce of the Senate, dated January 26, 1869, asking for information "relative to the probable cost of building and repairing the levees in the States of Louisiana, Mississippi and Arkansas, as designated in Senate bill No. 795 of the present session," I transmit a report upon the subject by Brevet Brigadier General H. L. Abbott, corps of engineers, to whom, on account of his connection with the surveys and investigations made in 1857–61, and with later examinations of those levees in 1865–66, and of his thorough knowledge of the subject, this matter was referred.

The report treats first, of the repairs required to bring the existing breaks in the levees to the dimensions now adopted by the State authorities; second, of giving increased thickness to the present levees without increasing their height; and third, of the increased height and thickness to be given to the levees in order to protect the alluvion of those States against overflow when the whole flood-volume of the Mississippi is confined within its banks by a levee system perfected from the head of the alluvial region to the Gulf of Mexico.

The estimates of cost for, 1st, repairing the existing breaks; 2d, for increasing the thickness of the existing levees with the present height; and 3d, for perfecting levees to a height sufficient to guard against all probable contingencies, are summed up by him as follows:

	For repairing existing breaks.	For perfecting existing levees to present height.	For perfecting existing levees to proper height.
LOUISIANA.			
Below Red river, (both banks	$600,000	$1,730,000	$4,600,000
Above Red river, (right bank)	200,000	800,000	8,420,000
To exclude water escaping above boundary	250,000	250,000	2,000,000
Total	1,050,000	2,780,000	15,020,000
MISSISSIPPI.			
Yazoo grant	$1,500,000	$1,500,000	$4,150,000
ARKANSAS.			
Louisiana to Arkansas river	$700,000	$960,000	$4,700,000
White river to Helena	150,000	350,000	2,000,000
St. Francis bottom lands	1,000,000	1,600,000	12,360,000
Total	1,850,000	2,910,000	19,060,000
Grand total for the three States	$4,150,000	6,940,000	$36,230,000

I fully concur in the views of General Abbot.

As this report is a continuation of the subject treated in the report of

1861, which was recently printed by Congress, and as it is a subject of great importance, I would respectfully recommend that this also may be printed by Congress.

Very respectfully, your obedient servant,

A. A. HUMPHREYS,
Brigadier General of Engineers, Commanding.

Brevet Major General J. M. SCHOFIELD,
Secretary of War.

NOTE.—The third item, under the State of Louisiana, is to "include water escaping above the boundary;" and the amount being included in the estimate under the head of Arkansas, it is not carried out in the "grand total for the three States."

Report on repairing and perfecting the levees of the States of Louisiana, Mississippi, and Arkansas, including an analysis of the floods of 1862, 1865, *and* 1867, *with an appendix, containing an abstract of facts collected respecting the principal tributaries of the Mississippi river during these great inundations. Submitted to Major General A. A. Humphreys, Chief of Engineers, by Brevet Brigadier General Henry L. Abbot, major corps of engineers.*

WILLETT'S POINT, NEW YORK HARBOR,
February 16, 1869.

GENERAL: In accordance with instructions from headquarters corps of engineers, dated December 23, 1868, I have the honor to submit the following report upon the repairs required to bring the existing breaks in the levees of Louisiana, Mississippi, and Arkansas to the grade line now adopted by the State authorities; and also upon the more general question of protecting those States against overflow when the whole flood volume of the Mississippi is confined within its banks by a levee system perfected from the head of the alluvial region to the mouth. These two questions are quite distinct, and they will be considered separately.

REPAIRS OF EXISTING BREAKS.

The condition of the levees of the Mississippi in the preceding January is detailed in your report to the Secretary of War, dated May 31, 1866. Respecting changes in their condition since that date, the information in my possession is of a general character, being confined to the annual report of the board of levee commissioners of Louisiana, dated January 31, 1867; to a letter from Mr. J. A. Porter, recently chief engineer second division, Louisiana levees, detailing their condition in that State above Red river landing in May, 1867; to a letter from Mr. Minor Meriwether, chief engineer of the southern levee district of Mississippi, giving the condition, in April, 1867, of the levees under his charge, and, in general, of the other levees of that State; to certain vague information respecting the levees of Arkansas; and, lastly, to the general facts, that the high water of the spring of 1866, although not properly a great flood, did very considerable damage to the unfinished works then in progress, reducing them to nearly as bad a condition as they were in before the work of repair was undertaken in the autumn of 1865; that the high water of 1867 was a great flood, causing immense destruction throughout the alluvial region, and that the high water of 1868 did not rise above the ordinary spring stage of the river, doing only trifling injury. It is, therefore, evident that the following exhibit of the

present condition of the Mississippi levees, although sufficiently exact for general purposes, can only be considered an approximation to the truth.

The State of Louisiana alone seems to have made any determined effort to close the breaks in the levees. Between November 14, 1865, and January 31, 1867, there was expended under the direction of the board of levee commissioners $2,061,516 13 in making 4,674,414 cubic yards of embankment; leaving an estimated amount of $46,795 still required to complete the repairs. The amounts paid for superintendence, for closing crevasses in 1866, for negotiating bonds, &c., &c., amounting to over $600,000, are not included in this sum. The early flood of 1867 caused immense destruction throughout the State, notwithstanding this outlay.

The State of Lousiana may be conveniently divided into three great levee districts—the right bank from the northern boundary to Red river, the right bank below Red river, and the left bank below Baton Rouge. Of these, the first is subject to peculiar difficulties arising from the fact that the alluvial bottom lands extend above the State line into Arkansas, where they become too narrow to offer the greatest inducements for their owners to reclaim them, especially as in the northern part danger is to be apprehended from overflow both from the Mississippi and from the Arkansas. This unfortunate geographical position has always caused the planters of the Tensas bottom lands to suffer from overflow due to defects in levees not under their own control.

The most obvious means of protecting this part of Louisiana is a guard levee; which, starting from the Mississippi near the boundary line, shall be extended westward, diverging a little towards the south to follow a low ridge, until high land is reached. The length of the route is 22,800 feet, and the mean depth of overflow in the greatest floods, 7.1 feet; the latter corresponding to a horizontal line drawn from the high water mark of 1828 on the bank of the Mississippi. Adopting the present grade line of the State of Louisiana, these figures call for a 10-foot levee containing about 300,000 cubic yards of embankment, and costing about $120,000.

This is, no doubt, the most sure and probably the most economical method of obtaining temporary security against overflow from the State of Arkansas. There are, however, two serious objections to the project; first, such a levee would close bayou Maçon, the natural drain of a large district of swamp lands in Chicot county, Arkansas. This would entail the additional expense of providing a new channel for its rain water discharge, at a cost which can only be determined by detailed surveys. Second, in flood seasons such a levee would form, from any crevasse water escaping from the Mississippi in Chicot county, Arkansas, an immense lakes which would effectually overflow the plantations in the vicinity from back water. The project would therefore be vigorously opposed by the land owners in that district, and there would be danger of the levee being designedly cut. A compromise might perhaps be made by leaving bayou Maçon open, and extending levees down its banks to a point southwest of Providence, where the natural drains become so large as to permit the passage of about 100,000 cubic feet per second without injury to the bordering plantations; but, as will soon be explained, the ultimate requirements of a perfected levee system will make this scheme too dangerous to be adopted without careful surveys and bearings.

Another method of protecting northern Louisiana against overflow from Arkansas, is to extend the main Mississippi levees up the bank to Gaines's Landing, or perhaps only to the vicinity of Columbia, near which

a part of the overflow from above is diverted into Bayou Bœuf, thus partially relieving Bayou Maçon. It is to be regretted that the report of a recent survey (1866 or 1867) made in Chicot county, Arkansas, under the direction of the levee board of Louisiana, to throw light upon this problem, is not at hand. In the winter of 1865–'66, these levees were in a very bad condition, and it is believed that they are even worse at present. There were then seven breaks between the Louisiana line and Columbia, requiring about 390,000 cubic yards of embankment, costing about $156,000; and four breaks between Columbia and Gaines's Landing, requiring about 350,000 cubic yards of embankment, costing about $140,000. The levees still standing were much worn in many places, and the river was badly eroding its bank in the bend above Columbia. It may be safely assumed, therefore, that the present cost of repairing the levees to the existing grade from the State line to Columbia will not fall below $200,000, and thence to Gaines's Landing not below $200,000.

Whatever project is adopted, we may therefore be sure that $250,000 is a very moderate estimate of the outlay which is absolutely essential to prevent crevasse waters from flowing through Chicot county, Arkansas, into northern Louisiana, even supposing that the present height of the levees is sufficient.

From the northern boundary of Louisiana to the mouth of Red river, it would appear that a decided improvement was made between January, 1866, and May, 1867; for, on the latter date, Mr. J. A. Porter, chief engineer second division Louisiana levees, furnished the following list of crevasses, which shows that the new levees at several bad breaks named in your report to the Secretary of War had resisted the flood. Mr. Porter, however, adds that his estimates of the extent of the breaks is not based upon "that instrumental data which is alone accurate and reliable."

No. 1. Bass levee, three miles below Providence. Break occurred in upper wing connecting old and new levee; width, 1,000 feet; mean depth of water, 9 feet.

No. 2. Hawes Harris's place, on boundary line between Carroll and Madison parishes. Break occurred in a temporary levee, the main line as located not having been worked upon; width, three-fourths of a mile; mean depth of water, 6 feet.

No. 3. Towne's place, at lower mouth of General Grant's canal, 4 miles below Vicksburg. Break occurred in an old levee; width, 1,000 feet; depth of water, 6 feet.

No. 4. Buckner's place, in upper part of Tensas parish. Break in old levee; width, 400 feet; depth of water, 3 feet.

No. 5. Lower end of Point Pleasant levee, just above the Davis cut-off. Break in new levee, supposed to have been cut; width, 700 feet; depth of water, 5 feet.

No. 6. Brownler's, about 5 miles below Grand Gulf. Break caused by a cave, partly in old and partly in new levee; width, 600 feet; depth of water, 2½ feet.

No. 7. Bondurant's, opposite Brunsburg. Break caused by a cave in new levee; width, 300 feet; depth of water, 3 feet.

No. 8. J. M. Gillispie's, 1 mile above St. Joseph. Break in old levee; width, 500 feet; depth of water, 5 feet.

No. 9. Kempe's levee, about 6 miles below Rodney. Break occurred in new levee; width, 1,500 feet; depth of water, 9 feet.

No. 10. Surget's place, near Lake Concordia, known as the Marengo levee. Break caused by the giving way of the levee in an old bayou; width, 1,000 feet; depth of water, 8 feet, (in bayou, 13 feet.)

A comparison of certain of these breaks with their condition as given

in your report to the Secretary of War, indicates that Mr. Porter's "depth of water" refers to the surface flowing through the opening, and that this is about three feet below the top of the levees in the vicinity. Upon this supposition, *if the breaks could be repaired upon straight lines connecting their ends*, there would be required about 134,000 cubic yards of embankment. But such a location cannot be given to the new levees, which must in several of the crevasses take the form of extensive hoops, in order to be out of danger from caving bends. In January, 1866, the embankments required for repairs in this district, (above Red river,) omitting what was probably completed before the high water of that year, exceeded 800,000 cubic yards. Although several of the worst breaks had been permanently closed, some new ones had been made, and it may safely be assumed that 500,000 cubic yards of embankment, costing about $200,000, was required at the date of Mr. Porter's letter to put the levees in a state of ordinary repair upon their present grade. Probably no less sum is required now.

Below the mouth of Red river I have no information subsequent to the date of the report of the levee commissioners, which was presented before the flood of 1867. This states that the levees were either finished or in such a state of progress as to be considered secure on January 4, 1867, except the Chinn and Robertson, Grand and Morganza levees; and that it was anticipated that these would be completed by February 1. This was, however, hardly as favorable an exhibit as for the district above Red river, in which we have seen that the flood committed great ravages. In January, 1866, there were 59 breaks below the mouth of Red river, requiring 1,564,000 cubic yards of embankment. Assuming the same probable ratio of destruction below as above, the flood of 1867 should have left in this district crevasses requiring 1,000,000 cubic yards of embankment, at a cost of $400,000. Subsequent deterioration has probably raised this sum to $600,000. This estimate is hardly better than a guess; but, in the absence of authentic information, it will be adopted as perhaps sufficient for the general purposes of this report.

The total cost of repairing existing breaks in Louisiana, not including water entering through Chicot county, Arkansas, is then $800,000. In 1866 this amount was estimated at $1,200,000.

The State of Mississippi is fortunate in having her great district of alluvial lands entirely under her own control exposed to danger of overflow from no other State. It is situated, however, in precisely that part of the valley where the difficulty of restraining the floods is greatest. Her system of levee organization, adopted in 1858, was far in advance of that in other States; and her levees would doubtless now be the best upon the river, had not the war caused them to be neglected and in part destroyed.

My information concerning the breaks in this State is more exact than for any other, in fact, is partly official; being for the district comprised between Sunflower Landing, in Coahoma county, and the Vicksburg bluffs, supplied by Mr. Minor Meriwether, chief engineer; above, it is from Mr. William Henson, civil engineer, residing at Friar's Point. Both letters bear date in 1867, after the flood had begun to recede. In connection with your report of 1866, they render it possible to make reliable estimates for this region, which comprises the Yazoo bottom land.

Beginning at the north, there were in 1866, in De Soto county, about 4.5 miles of breaks, contents 150,000 cubic yards; in Tunica county, 8.5 miles of breaks, contents 460,000 cubic yards; in Coahoma county, above Hushpuckana, 9 breaks, contents 270,000 cubic yards; making, on the Yazoo front above Sunflower Landing, a total of 880,000 cubic

yards of embankment necessary in 1866. No repairs have been made since the date of these surveys, and in the flood of 1867 "numerous minor breaks" were formed, "nearly all small." Allowing for the wear of the exposed ends of the levees, and for these new breaks, 1,000,000 cubic yards of embankment, costing $400,000, is a fair estimate of the requirements for this district. The only other break in Coahoma county is Hushpuckana crevasse. About five miles of new levee were constructed in 1866 upon the permanent location to close this break—one of the most troublesome upon the river—but it broke in the flood of 1867. There are three nearly equally costly locations for the new levee—contents about 700,000 cubic yards. In Bolivar county there are three bad breaks, Pride's, Niblet's, and Easten's, which required, in 1867, according to Mr. Meriwether, 11.65 miles of levee to close them on the permanent location. The contents would probably be about 500,000 cubic yards. In Washington county there is only one bad break, the Miller bend crevasse, contents 150,000 cubic yards. In Issaquena county two important points only required repair in 1867, viz: Wade's and Christmas's; length of new levee necessary, 3.5 miles; contents probably about 200,000 cubic yards. This completes the levees of the State of Mississippi. The total requirements to close existing breaks are 2,550,000 cubic yards at a cost of about $1,020,000. Repairs in caving bends, which cannot long be deferred, will raise this amount to fully $1,500,000.

The State of Arkansas is naturallly divided into three levee districts—that extending from the Missouri line to Helena; that extending from Helena to the mouth of White river; and that extending from the Arkansas river to the Louisiana boundary.

The district extending from the northern boundary to Helena, is the most unfortunate in its geographical location of any upon the river, being entirely dependent for its security upon the perfection of the levees of Missouri. Water leaving the Mississippi between Cape Girardeau and Commerce bluffs, or between New Madrid and the Arkansas boundary, pours through the back country and returns to the Mississippi in Arkansas, through Mill bayou, opposite Island 30; Wappenoky bayou, near Island 40; a bayou near Island 46, or generally, over the banks below Council bend. Unless such water can be kept in the channel, the levees are attacked from the rear and washed into the river at and near the points indicated. It is, therefore, evident that no general system of protection can be carried into effect for Arkansas without including, as an essential part of the project, the perfection of the levees in the two districts of Missouri above named. Added to this difficulty is the one, even greater, that the river erodes its banks much more rapidly in this part of its course than nearer its mouth, owing to the more frequent and violent oscillations of its surface. Hence the construction of a levee system upon the immediate banks of the stream would be highly injudicious, so far as the protection of the back country is concerned; moderate levees, for local interests, might probably repay investment, as the recurrence of very great floods is rare. In a later portion of this report, when treating of a perfected levee system, these facts will be again considered; here, they are only mentioned in order to explain the necessity of including a part of Missouri in the estimates for repairing existing breaks in the Arkansas levees.

The inlet between Cape Girardeau and Commerce is small, and may be neglected in so very partial a treatment of the problem as that now under consideration.

From New Madrid to the Arkansas boundary the levees are in a tolerably good condition, and in 1866 there was a balance of the original

levee fund, donated by the general government to the State, still on hand. The distance by the levee route is about 50 miles; the needful repairs would probably be covered by $150,000.

From the boundary to Memphis there were, in 1866, 10 breaks, generally not long, but often deep. About 700,000 cubic yards of embankment were required, probably at a cost of 50 cents per yard, amounting to a total of $350,000. As the country had then recently assessed a tax for levee purposes, it is probable that further deterioration has been prevented.

Below Memphis the levees in 1866 were in a very bad condition. Constructed, in the first instance, too near the river, which, in this vicinity, is rapidly eroding its banks, (about 1.5 mile in 40 years in Council bend,) subject in the lower third to overflow from the rear; and, above all, having been neglected for several years, the levee might safely be considered as worthless. To repair it would be more expensive than to build a new levee on a proper location, removed from caving bends. The total distance is about 70 miles, and the cost of repairs (to old grade) would not be less than $500,000.

In fine, then, the repair of existing breaks on the St. Francis front, necessary to bring the levees, upon which depends the safety of the Arkansas lands, into as good condition as the portions still remaining uninjured, would involve an expenditure of about $1,000,000. When completed, these repairs would have so temporary a value that in ten years, unless an immense annual outlay were made, the country would probably be as much exposed to overflow as at present.

The Arkansas levee district, included between Helena and White rivers, is more fortunate than that just considered, in being perfectly protected from overflow from above by the Helena hills. It is, however, very small in extent. From Helena to Oldtown ridge there were in 1866 five breaks, contents 148,000 cubic yards, costing about $59,000 for repairs. From Oldtown ridge to Carson's Landing, near Islands 67 and 68, there were then several breaks, the worst being at the Lima place—total contents about 150,000 cubic yards, requiring about $60,000. Thence to Laconia the levees were good. (Distance 15 miles.) At Laconia the planters had repaired the State levee to Bob's bayou, which enters the Mississippi two miles below Island 71, a distance of seven miles, and had connected these termini by a rear levee 11 miles long, to keep out the overflow from White river, thus enclosing 15,000 acres of good land. The Laconia circuit broke in the upper part in 1867, and had to be cut below to let out the water. From Bob's bayou to Napoleon no levees ever existed. Probably the cost of repairs in this entire district would not exceed $150,000; but its protection is a strictly local matter.

The third Arkansas district, or rather that part of it lying below Gaines's landing, has already been considered in discussing the protection of northern Louisiana. Above Gaines's landing to Desha county line the levee is reported good. Thence to Napoleon it is practically gone. To protect this region from floods in Arkansas river, and from Mississippi back-water in that stream, levees have been extended up the river from near Napoleon to a point 45 miles below Little Rock, chiefly on the southern bank. The upper part of these levees is reported good, but several breaks are named, particularly at 4, at 10, and at 15 miles above Napoleon, and near Heckatoo plantation. To close the breaks in both rivers sufficiently to protect the region above Gaines's Landing from overflow (present grade) would probably involve an outlay of $300,000, making the total cost of repairing breaks in this third levee district of the State of Arkansas about $700,000.

To close the breaks necessary to protect the entire State would then call for an expenditure of $1,850,000.

In fine, then, to close the breaks now existing in the Mississippi levees would cost as follows:

State of Louisiana	$1,050,000
State of Mississippi	1,500,000
State of Arkansas	1,850,000

It should be remembered, however, that in these estimates the cost of excluding crevasse water, entering Louisiana through Chicot county, Arkansas, ($250,000,) is contained twice, once for Arkansas and once for Louisiana, and that the outlay required for Arkansas also gives protection to a part of Mississippi.

It should also be borne in mind that this money is required to simply replace the levee system of the Mississippi where it has already been when most complete. This is far below what the real security of the region demands, and the only justification for such an expenditure would be found in the fact that it would enable planters to make crops in ordinary seasons, well knowing that at recurrence of *great floods*, which happen usually about once in three or four years, extensive inundations would be sure to occur. In the suffering and reduced condition of the region at present, some such temporary and partial relief might enable the planters to obtain enough funds and credit to save their estates from ruin, and thus to prepare, eventually, for building the more extensive levees which security demands.

A PERFECTED LEVEE SYSTEM.

The investigations and surveys conducted by yourself between the years 1850 and 1861, and fully elaborated in the report upon the physics and hydraulics of the Mississippi, which constitutes professional papers No. 13 of the corps of engineers, have demonstrated that the best, and, indeed, the only feasible method of protecting the alluvial region from overflow, is that of a levee system in which the dimensions of the embankments are computed to restrain the maximum flood discharge of the river when confined to the channel from Cape Girardeau to the mouth. In that report the whole subject is thoroughly discussed, and the dimensions of the levees in all parts of the region are computed in detail from the very elaborate and exact data obtained by actual measurement in the flood of 1858. That flood was adopted as the standard, because a close comparative analysis of all other recorded floods, including that of 1859, proved that in no other would the maximum discharge have been in excess of what would have occurred in that flood had the levees been able to restrain the river to its bed. Hence, at the date of that report, (1861,) the probable difficulty and cost of a perfected system which should give to the plantations upon the banks of the Mississippi the same security that is enjoyed by the fields of Holland, was accurately known. The only point which demanded further investigation was whether the flood of 1858 had been correctly assumed as a standard—a point which time alone could certainly determine.

Since 1859 there have been but three great flood-years—1862, 1865, and 1867—the others belonging to the class of ordinary high waters, in which the projected levees would have largely exceeded the requirements of the maximum volume. To decide, therefore, at the present time upon the proper dimensions of levees for the Mississippi, we have only to compare carefully those three great floods with that of 1858 to

ascertain whether or not the water-marks and recorded facts indicate a maximum discharge at the head of the alluvial region, or just below the mouths of any of the lower tributaries, in excess of that which would have occurred in 1858 had all the water been confined to the channel from Cape Girardeau to the Gulf. If this question be decided in the negative, the flood of 1858 remains a safe standard; if in the affirmative, the estimates in the physics and hydraulics of the Mississippi must be modified to allow for the increased volume to be apprehended.

The first point, then, for attention is the extent of the information which has been preserved respecting the three great floods in question.

When acting as your assistant upon the examination of the levees in the winter of 1865–'66, I made every effort to collect all possible facts respecting the floods of 1862 and 1865. Sufficient high-water marks were found to indicate, with a good deal of precision, the level attained by each of those floods, as compared with that of 1858, throughout the alluvial region. Through the kindness of Mr. Aug. V. Taylor, at Cairo, and of Mr. G. W. R. Bayley, at New Orleans, daily records of the stand of the river at those points in 1865 were received. Some meagre information respecting the condition of the different tributaries during the two floods was also secured; but the war had distracted attention from river phenomena, and the lapse of time had rendered it impossible to collect as full data as could be desired, especially for the flood of 1862.

Before the flood of 1867 had subsided, instructions were issued from the headquarters of the corps of engineers, to Brevet Brigadier General McAlester, at New Orleans, to Brevet Colonel Merrill, at St. Louis, to Brevet Major Burroughs, at Nashville, and to Mr. W. Milnor Roberts, superintending engineer of Ohio river improvements, to collect all possible data respecting the overflow. Circular letters were accordingly at once addressed to the different civil and military authorities, requesting facts. Many valuable letters were received in reply. This material accompanied your instructions directing me to prepare this report, and upon it, and a few other data received from Mr. S. Staats Taylor, at Cairo, and from Colonel Merrill, at St. Louis, the following analysis of this flood is based.

Before proceeding to the detailed discussion of the three floods, the following table is presented to exhibit their relative high-water marks as compared with the floods of 1858 and 1859. It is properly a continuation of the flood table on page 170 Physics and Hydraulics of the Mississippi; but the flood level of 1862 has necessarily been adapted as the plan of reference, instead of that of 1858. The sign + denotes that the flood in question exceeded the height attained in 1862, and the sign — that it fell short of that height. The numbers following the signs denote the difference in height attained in the two floods, expressed in feet. In comparing the high-water levels in these different floods, the fact must be borne in mind that four cut-offs have occurred during the period, viz, the American Bend cut-off, on April 15, 1858; the Napoleon cut-off, on April 11, 1863; the Terrapin Neck cut-off, early in March, 1866; and the Davis cut-off, at Palmyra bend, on February 10, 1867. Their relative positions are indicated in the table.

Comparative heights of recent floods.

Locality.	1862.	1858.		1859.		1865.		1867.	
	Date.	Diff.	Date.	Diff.	Date.	Diff.	Date.	Diff.	Date.
		Feet.		*Feet.*		*Fect.*		*Feet.*	
St. Louis	Apr. 24	+5.7	June 15			—6.3 —4.6	Apr. 1 July 28	—6.9 —3.0	Feb. 21 May —
Cairo, Ill	May 2	—1.2	June 21, 22	—4.3	May 7	—2.8	Mar. 17, 18	—0.3	Mar. 21
New Madrid								—0.7	Mar. 25,27
5 miles above Oscola	May 6	+0.2	June 17, 23					—0.1	Mar. 20,24
Oceola								—0.3	Apr. 1
Memphis		—0.5	June 23	—0.6	May 12, 13	—1.1		—0.5	Mar. 26
Head of Cat island		—0.7				—0.9			
Foot of Cat island		—0.7		—1.0		—1.0			
Head of Walnut		—1.1		—3.1		—1.5			
Helena		—1.8	July 2, 6	—2.8	Mar. 22	—2 0		—0.6	Apr. 1
Friars' Point		—1.4		—2.1		—1.4		—0.0	Apr. 1,3
Wilkinson's Landing, Isl'd 63.		—0.9		—0.8		—0.9			
Sunflower Landing, Island 66.		—0.8		—0.5		—1.5		—0.4	Mar. 15
Concordia								—0.6	Mar. 28
1 mile above White river								—1 7	Mar. 30
3 miles below White river								—0.9	Mar. 30
Cut-off, April 11, 1863.									
6 miles above Beulah, (in old river, made by cut-off, April 11, 1863.)	May 4	—1.4	Apr. 1 July 8	—1.4	Mar. 22	—1.3	Apr. 12	—1.8	Mar. 14
Napoleon	Apr. 20	—2.1	Apr. 6, 7	—1.8	Mar. —	—0.3		—0.8	Apr. 3
Bolivar Bend, Island 76						—0.7			
Choctaw Bend, Island 79						—0 5		—0.8	Mar. 20
Greenville, Island 83		+1.4						—2.9	Apr. 1
Cut-off, April 15, 1858.									
Bunche's Bend								—2.1	
Wade's, (Island 93)								—1.5	April 8
Providence			April 8		April 25,28			—1.8	
Cut-off, March, 1866.									
Mouth of Yazoo								—0.0	
Vicksburg	April 27	—2.2	June 26, 27	—0.9	April 21,30	—2.7		—2.3	
Island 104, (Diamond)								—1.0	
Cut-off, February 10, 1867.									
Below Davis's cut-off								+1.0	
Hard times								+1.0	
Vidalia			June —		May 2			+0.2	
Red River Landing			July 13			—0.0			
Duvall's, (Island 124)						—3.5			
Carrollton		—0.8	May 10, 12	—0.4	May 6				
Algier's		—0.7		—0.5					

Flood of 1867.—As the records of this flood are more complete than of either of the others, it will be considered first.

In some respects its origin was peculiar. The winter of 1866–'67 was marked, throughout the southern portion of the Ohio valley, by an unusual downfall of snow and rain; while in the region drained by the upper Mississippi and lower Missouri the season was remarkably dry. A sudden thaw with warm rains in February caused moderate floods in the Alleghany and Monongahela rivers, and in the smaller tributaries of the Ohio heading near the main stream; and a great flood, second only to the flood of 1858 in the Wabash. The combined effects of those freshets was to cause a very sudden rise in the Ohio, which culminated at Louisville on February 22, where it was only eight feet below the high water of 1832; and at Caseyville, below the mouth of the Wabash, on March 1, where it was half a foot above the high water of 1832, the greatest of the recorded floods at that locality.

The same climatic influences extended over the valleys of the Illinois river and other southeastern tributaries of the upper Mississippi, producing a moderate freshet in the Mississippi at St. Louis. The rise there began on February 13, the river being 25.5 feet below the city directrix; it culminated on February 21, at 9.3 feet below this bench; after remaining four days sensibly at a stand the river gradually subsided, until on March 21 it was 21 feet below the directrix. The freshet at St. Louis was by no means a large one, being 16.9 feet below the high water of 1844, and 12.6 feet below that of 1858; still, it is evident that it almost exactly combined at Cairo with the February rise in the Ohio, and thus did its maximum of injury to the alluvial regions. The downfall at St. Louis was 2.3 inches in January, 4.8 inches in February, and 2.4 inches in March; showing a slight indication of the great February rains, but none whatever of those in March.

Such was the condition of the rivers when, in March, a wide-spread series of furious rain-storms occurred. The belt containing them extended from the head-waters of the Washita and White rivers of Arkansas eastward across the States of Arkansas, Missouri, Kentucky, Tennessee, western North Carolina, and western Virginia; but it was in the mountain region, where heads the Tennessee river, that the greatest deluge occurred. The downfall here was entirely beyond precedent, raising the Tennessee river at Chattanooga on March 11 53 feet above low water, or 15.5 feet above any known water-mark. With the Cumberland, the Kentucky, the Green, and, indeed, all the lower southern tributaries discharging full floods into the Ohio before the February rise had had time to pass away, this sudden Tennessee river flood raised the lower Ohio to the highest stand ever attained. Fortunately the immense wave found the Mississippi burdened only with the previous rise, the upper Mississippi, the Missouri, and the Arkansas all being low. The Washita, White, St. Francis, and Yazoo rivers were shallow from the same rains, but probably not sufficiently to produce much effect upon the great wave from the Ohio, which arrived rather too late to coincide with their freshets. This flood in the Ohio was no less remarkable for duration than for extreme height—matters of equal importance in effecting a flood in an immense channel like that of the lower Mississippi. For 32 continuous days, at Cincinnati, (February 16 to March 19,) the mean channel depth was 51.3 feet, the greatest being 55.8 feet and 57.3 feet, on February 22 and March 14 and 15 respectively, and the least being 44.6 feet, on March 2 and 3. So long a continuance at this stage is beyond precedent.

These facts respecting the tributaries make it evident that the flood of 1867 in the Mississippi itself must have been marked by many peculiarities. In order to convey a clear idea of its character I have prepared the accompanying plate, drawn upon the same scale as that adopted in the report upon the physics and hydraulics of the Mississippi, to illustrate the floods there discussed. [For plate referred to see original on file in office of Chief of Engineers.] It will be noticed that, beside the oscillations at various points in 1867 and 1865, the plate contains other valuable river records, obtained through the kindness of Mr. Taylor and Mr. Bayley.

Since there was no great Mississippi flood above the mouth of the Ohio in 1867, Cairo is the first point which requires attention. It is a particularly important locality in all floods, being situated so near the head of the alluvial region that, when the source of the flood is known, a relative estimate of the maximum discharge into that district may be formed from a judicious study of the gauge indications there; but in this

connection it is well to call attention to the following facts, which were fully established by repeated observations upon the Mississippi, and which, paradoxical as they may appear, are in perfect accordance with the laws governing flowing water.—(See page 324 Physics and Hydraulics of the Mississippi.)

1. For any given stand there is much more water passing when the river is rising than when it is falling.

2. For any given stand there is usually more water passing in a long and rapid than in a short and slow rise; but this is not always the case, the discharge being governed by the relative stage of the water in the channel above and below.

3. The maximum discharge in any normal rise occurs when the river has reached a point a few inches below the highest point attained.

4. If, when a freshet has culminated, and the water either comes to a stand or begins to fall, a second rise occurs, it will cause the surface to rise considerably higher than would have been the case had the same volume passed without a previous diminution of supply. For instance, in the flood of 1851 the Mississippi at Red River landing attained a certain stage, with a measured discharge of 1,200,000 cubic feet per second. It had ceased to rise and was just ready to begin to fall, with a discharge reduced to 1,160,000 cubic feet, when the volume was again increased to 1,200,000 cubic feet. The river immediately rose to a point two feet higher than before. This was no isolated case, but was in strict accordance with general river laws, as is fully explained on page 363 Physics and Hydraulics of the Mississippi.

It is therefore carefully to be borne in mind that the maximum discharges of two floods are by no means necessarily proportional to the relative water level attained in them. Under some circumstances the lesser discharge may cause the higher water mark. These principles being understood, the facts connected with the flood of 1867 at Cairo will be considered.

At Cairo, on February 1, the river was at an ordinary low-water stage, the water surface reaching 3.9 feet on the gauge of the Cairo City Company. On the morning of the 2d it had begun to rise rapidly. The February freshets in the upper Ohio culminated at Louisville on February 22, being eight feet below high water of 1832; that in the Wabash at Vincennes on the same date rising half a foot above all known water marks, and that in the Mississippi at St. Louis on February 21–25 being 12.6 feet below high water of 1858. The combined effects of these floods arrived at Cairo on March 1, bringing the river to a stand at about the level of the high water of 1858, (0.2 foot above that level at the foot of 20th street, and 0.3 foot below it near the junction of the two rivers.) This rise of 36.7 feet in 28 days was unprecedented. The river then gradually declined until, on March 8, it had fallen 0.9 foot; it then again slowly swelled until, on March 21, it reached its highest stand, (1.4 foot above high water of 1858 and 0.1 foot above high water of 1862, at the foot of 20th street, and 0.9 above the high water of 1858, and 0.3 foot below the high water of 1862, near the junction of the two rivers. These discrepancies in flood level must always be expected at Cairo, unless the water surface is taken at the *junction* of the two rivers. Thus, Mr. Hely, city engineer, reports that on March 18, 1867, he found the Ohio water to be 11.5 inches above that of the Mississippi at the north junction of the Cairo levees, the stations being 60 feet apart.) This second swell was, of course, due to the arrival of the combined upper Ohio, Cumberland, and Tennessee rise. After culminating, the river at Cairo fell nearly as rapidly as it had risen. (See plate.)

What do these facts indicate respecting the maximum discharge into the head of the alluvial region in the flood of 1867? This discharge must plainly have occurred *late in February, just before the first swell culminated*, for the conditions at Red River landing in 1851 were repeated in the second rise. The height attained in the first swell was not quite equal to the high-water level of 1858; but, since the rise was longer and more rapid, it will not be safe to estimate the discharge at Cairo at a less amount than it was in that year, which accurately measured was 1,420,000 cubic feet per second. Since there was no overflow into the St. Francis bottom between Cape Girardeau and Cairo in 1867, this amount represents the whole of the maximum volume poured into the alluvial region near its head in that year. In 1858, at the date of maximum discharge at Cairo, 35,000 cubic feet per second were passing through Cape Girardeau inlet, and 20,000 cubic feet over the banks between Commerce Bluffs and Cairo—giving a total maximum discharge into the alluvial region of 1,475,000 cubic feet per second, or 55,000 cubic feet more than in 1867.

Without claiming exact accuracy for this estimate of the maximum volume to be kept in the channel in 1867 by a perfected levee system, it is hardly possible that any error equalling 55,000 cubic feet per second can exist in it. Clearly, then, levees computed for the flood of 1858 would have restrained that of 1867, at least as far as the mouth of the first tributary below the Ohio. To this point, Helena, we may therefore turn our attention.

At Helena the first rise culminated about March 14, standing one foot above high water of 1858, and 0.8 foot below high water of 1862. The river then subsided about 0.3 foot, but again swelled to its highest point during the year on April 1, being then 0.2 foot above the mark of the first rise. In the next 20 days it gradually subsided about five feet, remained steadily at this level for three weeks and then fell rapidly. (See plate, both Helena and Friar's Point.)

Those facts strongly confirm the inference derived from the Cairo records, that the maximum discharge in 1867 was materially less than in 1858. In the latter flood the highest water was due to the immense wave which poured through the St. Francis bottom lands into the river, already swelling with water from above. This sudden influx, combined with the nearly simultaneous breaking of several immense crevasses immediately below Helena, lowered the actual high-water mark anomalously about 3.2 feet. (See page 406 Physics and Hydraulics of the Mississippi.) In 1867 the records indicate no such influences. The St. Francis river in 1858 was contributing 30,000 cubic feet per second of rain-water to the Mississippi at the time when the great wave, if restrained to the channel, would have passed; and there is no reason for estimating a larger supply in 1867. Hence, had no anomalous influence lowered the high water of 1858 at this locality, the river would have risen 3.2—1=say two feet above the level attained in 1867. But the actual maximum discharge in 1858 was 1,334,000 cubic feet per second; two feet lower, it would normally be about 1,234,000 cubic feet per second, which was probably the maximum discharge in 1867. Hence, for the volume absorbed in 1867 in filling the bed of the river between Cairo and Helena, and thus producing the rises in that district between the dates of highest water at the two localities, we have 1,420,000—1,234,000=186,000 cubic feet per second. The *actually measured* effect of this channel influence between these two points in the March rise of 1858 was 140,000 cubic feet per second, (see page 349 Physics and Hydraulics of the Mississippi,) and as the general filling of the channel was much greater in 1867 than

in March, 1858, such an excess (46,000 cubic feet) in 1867 is to be anticipated, as called for by the facts known respecting the river in that flood. In fine, then, the conclusion reached from the Cairo records that the head of the alluvial region received about 55,000 cubic feet per second less water at the date of maximum discharge in 1867 than at the same time in 1858 is surprisingly confirmed by all the facts noted at Helena.

The next point where an accession to the flood wave could have occurred is Napoleon, just below the joint mouths of the Arkansas and White rivers. The oscillations at Beulah (see plate) represent very nearly those which must have occurred at this locality. Unfortunately the cut-off which was made here in 1863 renders it impossible to apply a close analysis to the water-marks of the two floods. It is a matter of record that there was a moderate freshet in both of the tributaries (particularly in White river) in March, 1867, but that at the date of highest water at Napoleon, (April 3) the current of the Arkansas was almost checked, for 53 miles above its mouth, by back-water from the Mississippi. In 1858 the maximum flood wave, if confined to the channel, would have received about 60,000 cubic feet per second from these two tributaries, making its volume 197,000 cubic feet per second larger than the actual maximum discharge. Starting with 55,000 cubic feet per second less, and being much more depleted on its passage by the necessity of filling a comparatively empty channel, the flood wave of 1867, if confined by levees, would have required immense contributions from the Arkansas and White rivers to raise its volume to that of 1858 at Napoleon. Such contributions we know, from the recorded facts, it could not have received. Indeed there is little doubt that its maximum discharges would have fallen short of that of 1858 from 50,000 to 100,000 cubic feet per second at Napoleon. By no possibility could it have equalled that flood.

Vicksburg, below the mouth of the next tributary, Yazoo river, is now to be considered. The two cut-offs recently made in this vicinity, Terrapin neck in March, 1866, and the Davis cut-off in February, 1867, render any close analysis of this flood by studying the water-marks impossible. There are indications that, at the date of highest water, the Yazoo river was discharging a considerable volume, the supply probably consisting, as is usually the case, largely of water returning from the swamps. In 1858 the great flood-wave, if confined to the channel, would have received about 30,000 cubic feet per second of rain water from this tributary, and the facts reported do not lead to the conclusion that this contribution would have been much, if any, exceeded in 1867. Certainly any possible excess would have fallen far short of the amounts required to produce an equality of discharge in the floods.

In Red river there was a considerable flood in June, and probably a moderate rise in March, due chiefly to contributions from Washita river. Precise facts, however, have not been secured respecting this tributary, which is the last that enters the Mississippi.

In fine, then, the information collected respecting the flood of 1867 renders it certain that a thorough levee system, based upon the flood of 1858, would have been amply sufficient to protect the whole alluvial region from overflow. At no point would the water have risen to within one or two feet of the mark which would have been left by the flood of 1858 had it been strictly confined to the channel. Yet the actual water mark of 1867 was, in general, a little higher than that of 1858. This apparent discrepancy is easily understood when it is remembered that there has never yet been a high-water mark not lowered by crevasses discharging into the swamps, the amount of the lowering varying greatly with the locality and with the peculiar conditions of the flood. The

more perfect state of the levee in 1858 kept the swamps comparatively empty early in the season, and thus left a reservoir which, when they broke, at date of maximum discharge, served to reduce the high mark more than was the case in 1867, the swamps having been early filled in that year. No more palpable error can therefore be committed than to attempt to estimate the relative difficulty of restraining different floods to the channel by simply comparing their actual water marks. It is only by an analysis like the preceding that any well-grounded opinion can be formed upon such a matter.

Flood of 1865.—Occurring just at the close of the war, no facts have been preserved upon which to base a close analysis of this flood. The foregoing table exhibits how its water marks compare with those of 1858. Rising to a less level at Cairo by 1.6 feet, there is no probability that the flood of 1865 equalled that, or even the flood of 1867, in maximum discharge into the head of the alluvial region, upon which, of course, the difficulty of restraining floods primarily depends.

The daily oscillations at Cairo and at New Orleans, the former recorded by the engineers of the Cairo City Company, and the latter by Mr. Bayley, are represented upon the accompanying plate. They give a good general idea of the flood, which seems to be remarkable for duration rather than for extreme volume of maximum discharge. Applying the principles and table given upon page 133, Physics and Hydraulics of the Mississippi, to the New Orleans curve, the total annual discharge there in the river year, November 1, 1864, to October 31, 1865, is found to be 20,788,000,000,000 cubic feet, much less than that usual in great flood years, (about 27,000,000,000,000 of cubic feet.)

The facts collected respecting the action of the chief tributaries are meagre. There was a great flood of the upper Ohio in the middle of March, which at and above Cincinnati seems to have compared favorably with those of 1862 and 1867. It probably received relatively small contributions from the Wabash, the Cumberland, and Tennessee, for at Cairo its height was materially less. There was no great flood in that year in the upper Mississippi or the Missouri, since the record at St. Louis shows that the river there hardly rose above ordinary stages in any month except in the latter part of July and August, when a little freshet occurred, causing the river for about five weeks to average 10 feet above its usual stage at that season. No records of any great flood in the Arkansas or White rivers are in my possession, but they are too defective to render it certain that none occurred. In upper Red river a freshet in June is mentioned, and the fact is recorded that, at the mouth of Bayou Tensas the flood rose 1.8 feet above all previous marks, a circumstance no doubt explained by the immense crevasses in Carroll and Madison parishes. It is also a matter of record that Bayou Teche overflowed its banks in low places as far up as Franklin, and that the high water at Brashear City on Berwick's bay was only one foot below the great flood of 1828. These facts, due also to crevasses, probably explain the small annual discharge at New Orleans as compared with other flood years.

In fine, then, we may confidently place the overflow of 1865 in the second class of great floods in which the maximum discharge with perfected levees would have fallen far short of that quantity in 1858, or even in 1867.

Flood of 1862. Beyond a doubt this was one of the greatest floods which ever occurred upon the Mississippi, and it is extremely to be regretted that the war raging at the time has so obliterated all records that it must always remain classed with the traditional overflows of 1815 and 1828, respecting which we do not possess the data to permit a close

analytical comparison with the standard flood of 1858. Even the able engineers of the Cairo city property, whose daily river records are doing so much for the proper understanding of the hydraulics of the Mississippi, failed to record the history of this flood, only preserving its extreme high-water level, (attained on May 2,) to remain a standing subject of perplexing speculation for future students of the river.

We know that there was a very great flood in the Ohio river at Cincinnati, and also in the Cumberland river, some time in the spring of 1862, and a destructive overflow in the Wabash in February. There was also a moderate flood in the Mississippi at St. Louis, which began to rise on March 12, from a stand 26 feet below the city directrix, and culminated on April 26 at 2.4 feet below that bench. It then gradually subsided until, on June 9, it stood 15 feet below the directrix. It remained above and within two feet of this level until July 26, when it slowly subsided to the usual low-water stage, (about 25 feet below the directrix.

At Cairo, the highest water occurred on May 2, and was 1.2 feet above the high water of 1858. Its date evidently corresponds to that of the freshet at St. Louis; but this freshet, 5.7 feet below the high water of 1858, could only have produced such a rise at Cairo by combining with the great Ohio flood. How did these freshets meet? If, as was the case in 1858, they united so exactly at Cairo as to raise the river uniformly for the last 8 or 10 feet up to high-water mark without any intermediate stand or slight fall like that at Red river landing in 1851, or at Cairo in 1867, then the maximum discharge must have exceeded that of 1858 by about 50,000 cubic feet per second. But even supposing this to have been the case, it is very certain that a flood 5.7 feet below that of 1858 at St. Louis could not have risen nearly so high at Cape Girardeau, and thence to Cairo; and hence could not have lost the 55,000 cubic feet per second, or any large part of it, into the St. Francis bottom lands. Under no supposition, then, could the flood of 1862 have discharged a larger volume into the head of the alluvial region than the flood of 1858. If, as in 1867, there was a slight recession at Cairo just before the extreme high-water mark was attained, due to a slight want of coincidence in the floods of the two rivers, it is probable that, as in that year, the maximum volume contributed to the alluvial region fell short of the discharge in 1858 by perhaps 50,000 cubic feet per second. The want of recorded facts at Cairo must always leave this a matter of doubt, and the most unfavorable theory must therefore be adopted, namely, that the two floods were equal in maximum discharge into the head of the alluvial region, (1,475,000 cubic feet per second.)

Between Cape Girardeau and Napoleon, then, we may safely consider that levees raised to the grade required to retain the flood of 1858 would have been severely taxed in 1862, but that they would have been sufficient. The only supposable conditions to cause their failure would be that the flood, wave had found the lower river more full than it was in 1858, which, under the conditions of the latter flood, would be extremely improbable.

At Napoleon the flood-wave in 1862 received a moderate freshet from the Arkansas, and probably from the White river also. This is established not only by the records, but also by the recorded date of high water, April 20. It is plain that the Arkansas flood was the earlier of the two; and very possibly if the river had been confined by levees no dangerous coincidence would have occurred. In the condition of the records, however, this must always remain a matter of doubt.

It is believed that there was no flood in the Yazoo or Red rivers at date

of high water in 1862, (except water returning from the swamps,) but the records are too defective to render this certain.

In fine, then, as already stated, the flood of 1862 must probably always remain a source of anxious perplexity to engineers having the direction of the levee system of the Mississippi. The actual high-water marks of that year generally exceed those of any other by several inches, (see table already given;) but, as fully explained above, this proves absolutely nothing respecting the relative difficulty of restraining these floods had the levee system been perfected at their date. In my judgment, the only conclusion which the facts will warrant is that the two floods were essentially equal in the strain to which they would have subjected a general levee system; but that the recurrence so soon of so dangerous a flood should decisively forbid any reduction, upon grounds of economy, of the dimensions calculated to restrain the flood of 1858. They are the minimum consistent with safety in the first class of Mississippi floods. Fortunately this class is rare. It is certain that such a system would have been severely tested during the last 45 years only in 1828, 1858, and 1862, or upon an average about once in 15 years.

It may be permitted, in this connection, to invite attention to the importance of preserving hereafter full records of the oscillations of the Mississippi, and of the dates, heights, and duration of the freshets of its larger tributaries. Such records are absolutely indispensable to any judicious treatment of the problem of protecting the alluvial region against overthrow.

ESTIMATES FOR A PERFECTED LEVEE SYSTEM.

It may then be considered as established that the floods which have occurred since the publication of the report upon the physics and hydraulics of the Mississippi do not call for any modification in the theory or in the dimensions of the embankments therein projected. Their height was determined by close calculation from actual measurements made upon the flood of 1858 between Cape Girardeau and the Gulf. These measurements were so exact, so extensive, and so elaborate that the complete history of the great wave which entered the alluvial region in June was traced out, determining where, when, and in what quantities the surplus waters both left and returned to the channel. This enabled a precise estimate to be made of the amount by which the actual measured maximum flood volume, at any point, fell below what it would have been had no water escaped, while a most thorough experimental study of the river rendered it possible to predict, with accuracy, the height to which the water would have risen above the actual local high-water marks had none left the channel. It was also proved, by extended soundings and measurements, that the bed of the river cannot be deepened by any slight increase in the velocity of its waters; and that no deposit in the channel need be dreaded from any slight reduction in its rate of measurement; in other words, that the bed is essentially unchanging in dimensions. Elaborate investigation also established that by no other plan of protection, except the levee system, could the surplus water in 1858 have been prevented from devastating the alluvial region. To accomplish this object levees, raised to the following heights, were required:

Near the mouth of the Ohio they should be made about three feet above the actual high-water level of 1858, which has been selected as the plane of reference, because more unvarying than the surface of the ground. The height above this level should be gradually increased to about seven feet at Osceola; thence to Helena the latter height should be maintained. Thence to Island 71 the height should be gradually increased to 10 feet; thence to the vicinity of Napoleon it may be gradually reduced to eight feet; thence to Lake Providence it must be gradually increased to 11 feet; thence to the mouth of the Yazoo it may be

gradually reduced to six feet, and should be thus maintained to Red River landing. Between that locality and Baton Rouge it should be kept uniformly about four feet; and below Baton Rouge about three feet. The above estimate is exclusive of settling, and allows about a foot for possible rise above the height necessary for restraining the flood of 1858.

The comparative tables of great floods in the report, upon the physics and hydraulics of the Mississippi, and this report, will render it easy to reduce any well-determined high-water mark to that of 1858, should the latter be lost at any locality.

The form of cross-section recommended for ordinary levees was the following: the width of the crown to equal its height above the ground with slopes of one on three towards the river, and one on two towards the land.

The estimates of costs were made by allowing 20 cents to the cubic yard of embankment, the usual price at the date of the report; at present rates 40 cents is more nearly correct, and in this respect only will the basis of those estimates be now modified.

The only point not treated in the physics and hydraulics of the Mississippi, upon which estimates are now called for, is the project for protecting northern Louisiana against overflow from the State of Arkansas by means of a guard levee near the boundary line. Without new surveys no absolute answer can be given to this question. We know, as already stated, that to carry the present grade across the Bayou Tensas bottom lands would require an embankment 22,800 feet long and 10 feet high, containing about 300,000 cubic yards. But the grade of levees really necessary here is eight feet higher than this, calling for an embankment containing about 950,000 cubic yards and costing about $380,000. Moreover, it is very probable that, to secure this increased height, the levees would have to be extended across the low ridge dividing Bayou Maçon from Bayou Bœuf, and also across the bottom lands of that stream; if so, the cost would not be less than $1,000,000, if, indeed, the natural drainage of the country would not render it absolutely necessary to leave Bayou Maçon and Bayou Bœuf open, which, with a Mississippi high-water mark raised 10 or 11 feet above that of 1858, would require a very extensive system of levees along these bayous. Hence, so far as the surveys at hand authorize any definite opinion, we must conclude that this plan for protecting Louisiana will probably involve an outlay of at least $2,000,000, even if it should prove to be practicable at all. One important point should not be overlooked; namely, whether, in connection with the guard levee and the bayous, a flood outlet having a capacity of about 100,000 cubic feet per second might not be practicable and safe. Such an outlet would lower the high-water mark of the Mississippi between two and three feet along the Tensas and lower Yazoo fronts, and would thus materially reduce the cost of levees in this the most difficult portion of the river. The natural capacity of the bayous below Lake Providence would permit such a volume to pass off without much damage to the plantations on their banks; but, before the project should be attempted, extensive surveys ought to be made, and many borings, to decide whether the sub-strata of clay are thick enough to warrant a belief that the outlet might not unduly enlarge its capacity. The recent experience with the rapidly-increasing cut at Providence does not seem to favor the project; which under any circumstances would be very costly, beside being somewhat dangerous to the Black River country in case of a coincidence of large floods in the Mississippi and Red rivers.

One other district deserves special attention in making estimates for a perfected system of levees—the St. Francis bottom. As already stated, this region is peculiarly difficult to reclaim, because, although a unit

geographically, it comes under the jurisdiction of two States; because the violent oscillations of the Mississippi along its front and their frequent recurrence, with the consequent rapidity of current, cause the river to erode its banks at an alarming rate; and because an unlucky system of swamp ridges diverts water at several points back into the stream instead of alluring it to collect and return through the channel of the St. Francis river. To securely protect such a district requires strict attention to four points: 1st. To locate the main levee on swamp ridges out of the reach of caving bends—say at least 1.5 mile from the fundus of each and all of them. 2d. To begin its construction at the north and extend south, and not the reverse, lest the work be destroyed before completed. 3d. To consider the local drainage of the back country, and to cut through such ridges as would cause rain-water lakes to be formed by the levee. 4th. To adopt a sufficient grade for the levee at first, and to carefully study the subject as the work progresses, with a view to modification if necessary.

A levee thus made would reclaim about 3,000,000 acres of the best corn and cotton land in the world, capable of raising 60 bushels of the former or a bale of the latter to the acre, year after year, without becoming exhausted. Its location would throw out much valuable land on the river bank, but this is a small consideration compared with the security of the back country. Local levees might be added at favorable points for local interests.

Since the war a project has been started to combine levee and railroad in constructing an embankment, and thus to accomplish two results with one outlay. The projected route starts from the mouth of the St. Francis river near Helena; follows the general route of the Mississippi, avoiding the bends, as far as New Madrid; here leaves the river, and follows Big Prairie, a ridge above overflow, north to connect with the Iron Mountain railroad of Missouri. Its embankment, if properly made and located, would effectually protect more than three-fourths of the entire district. The railroad company would be the best possible guard for the levee, as they would be compelled to keep it always in repair. Branch roods would furnish ready transportation for crops to Memphis or St. Louis throughout the whole bottom; and finally the levee being put to a useful purpose, in addition to its usual passive work of protection, could be made more thoroughly at less cost.

The surveys made by the Memphis and St. Louis Railroad Company were not elaborate, but they served to show that the length of the line from the mouth of St. Francis river to Madrid, the only portion liable to overflow, was 170 miles, and that for about half of the distance (the only profile presented) the local high-water marks were about 5.5 feet above the ground. This would call for an embankment about 17 feet high, 12 feet wide on top, with slopes of one on three and one on two; contents, 30,900,000 cubic yards; cost, $12,360,000, or about $73,000 per mile. This amount is small compared with the railroad outlay often required in mountainous districts, and as the project is greatly superior to that of levees built along the river bank, upon which the estimates in the Physics and Hydraulics of the Mississippi were based, it will be adopted here as the best method of offering permanent protection to the swamp lands of the St. Francis district lying in Arkansas. Incidentally a large extent of these lands belonging to Missouri would also be protected by the embankment.

The following table is partly a recapitulation of estimates already given, and is partly deduced from the table on page 420 Physics and Hydraulics of the Mississippi, allowances being made for the deterioration of

existing levees since the date of that report, and the cost per cubic yard of embankment being taken at 40 cents instead of 20 cents. The column "for perfecting existing levees to present height" is given because, as they now stand throughout the greater part of the valley, they encourage delusive hopes of protection. Whenever the river rises three feet above its natural banks, disastrous crevasses are sure to occur; and if break upon the river were now closed, any flood worthy of the name every would be certain to open new ones in sufficient numbers to devastate large areas of the alluvial lands. In other words, existing levees are as defective in cross-section as in height, and the cost of sufficiently strengthening them to resist the pressure of the floods would be a necessary outlay, even if the flood volume, when restrained to the river, should not rise above its present level. Some of the more recent embankments, and especially the levees of the State of Mississippi constructed under the direction of Mr. Meriwether, as chief engineer, are not liable to this criticism.

Consolidated levee estimates.

	For repairing existing breaks.	For perfecting existing levees to present height.	For perfecting existing levees to proper height.
LOUISIANA.			
Below Red river (both banks)	$600,000	$1,730,000	$4,600,000
Above Red river (right bank)	200,000	800,000	8,420,000
To exclude water escaping above boundary	250,000	250,000	2,000,000
Total, say	1,050,000	2,780,000	15,020,000
MISSISSIPPI.			
Yazoo front	$1,500,000	$1,500,000	$4,150,000
ARKANSAS.			
Louisiana to Arkansas river	$700,000	$960,000	$4,700,000
White river to Helena	150,000	350,000	2,000,000
St. Francis bottom lands	1,000,000	1,600,000	12,360,000
Total, say	1,850,000	2,910,000	19,060,000
Grand total for the three States	$4,150,000	$6,940,000	$36,230,000

The levees contemplated in these estimates are large—much larger than residents of the alluvial lands in general anticipate; but, in the language of the report of 1866, they "would not, when greatest, exceed in magnitude those on the right branch of the Rhine below Arnheim, which protect the most fertile part of Holland. These levees are exposed at high water to as strong a current as that of the Mississippi in flood, and also to the destructive effects of ice. But the occurrence of crevasses, such as take place with every great flood of the Mississippi, are there unknown. Should they happen, the ruin of a large part of the most productive portion of Holland would follow, as extensive tracts protected by the levees are lower than the surface of the sea, and their reclamation

from overflow could only be effected by a drainage similar to that which has been applied to the lake of Harlem. The supervision, watching, and repair of these levees is costly, but effective and remunerative. The levees of the Mississippi, as now existing, are trifling compared to the interests they protect, and to the levees of the delta rivers of Europe—the Po, the Rhine, and the Vistula."

The cost of the Mississippi levees, as indicated in the foregoing table, would not be trifling, but it should be remembered that the figures are based upon present inflated prices. The project can hardly be considered as beyond the limits of judicious investment when it is remembered that the amount actually expended upon the Erie canal exceeds $33,000,000, and this, too, mostly paid in gold. A slight idea of the profits which may be anticipated, as compared with the necessary outlay, can be formed from the following facts: The total area of the bottom lands is about 32,000 square miles, of which a mere narrow strip along the main stream and its principal tributaries and bayous has been heretofore open to cultivation. Protected against the river and properly drained, this would render available at least 2,500,000 acres of sugar land, or more than double the amount heretofore planted; about 7,000,000 acres of the best cotton land in the world, capable of yielding a bale to the acre; and not less than 1,000,000 acres of corn land of unsurpassed and inexhaustible fertility. An expenditure of about $3 to the acre (present prices) of land actually made cultivable by the levees would thus be sufficient to reclaim them from overflow. Supposing the cotton lands alone to be under cultivation, a tax of one cent a pound for one crop would nearly pay the cost of the levees for the entire valley.

I am, general, very respectfully, your obedient servant,

HENRY L. ABBOT,

Major of Engineers and Brevet Brigadier General.

Major General A. A. HUMPHREYS,

Commanding Corps of Engineers.

APPENDIX A.

As the three floods of 1862, 1865, and 1867 will no doubt often be studied and discussed hereafter, I have thought it advisable to append a brief abstract of the most important facts collected respecting each of the main tributaries, beginning near their sources and proceeding in regular geographical order toward their mouths.

OHIO RIVER.

Pittsburg.—The ice broke up on February 3, 1867, causing river to rise and immediately to fall eight feet. The next freshet began to rise rapidly on February 14. By February 15, it stood 22 feet by the Allegheny pier mark and began falling. The largest freshet of the year attained its height, 22.3 feet by the Allegheny pier mark, on March 13, and then rapidly fell. It was 10 feet below high water of 1832, and eight feet below that of 1865, which was highest on March 18, and chiefly due to an Allegheny freshet.

Rochester, (26 miles below Pitsburg.)—The freshet of February 15, 1867, was higher by six inches than that of March 12, 1867, being 28.5 feet in channel. It was 13.5 feet below high water of 1832; 10.5 feet below that of 1852, and 7.5 feet below that of March 18, 1865, which was precisely equal to the 1860 and 1861 freshets.

Marietta, (171 miles below Pittsburg.)—River began rising slowly on February 9, 1867; attained highest point, 35 feet above low water, on February 17–18; fell slowly; began rising on March 9, and culminated on March 13–14, at a point 28 feet above low water; then slowly receded. Downfall in February, 1.8 inches; in March, 5.3 inches.

Parkersburg, (183 miles below Pittsburg.)—River began rising on February 13, 1867; was highest, 36 feet above low water, on February 17–18; fell slowly. Its high-water mark was 2.5 feet below that of 1855.

Cincinnati, (466 miles below Pittsburg.)—The *duration* of the flood of 1867 was unprecedented. For 32 consecutive days (February 16 to March 19) the mean channel depth was 51.3 feet, the greatest depth being 55.8 feet on February 22, and 57.3 feet on March 14–15, and the least depth being 44.6 feet on March 2–3. The March rise was 0.6 feet below high water of 1865, and 1.3 feet below that of 1862. Immense local rains during flood of 1867.

Louisville, (618 miles below Pittsburg.)—The rise of February 22, 1867, was eight feet, and that of March 15, 2.8 feet below the high water of 1832. The March rise was a little below the high water of 1847. For five months snows and rains had been excessive, the downfall being estimated at three times the usual amount.

Wabash river.—In 1867 there was only one important rise which occurred in February. At Eugene, Indiana, (350 miles above mouth,) by exact marks the high water of 1858 was the highest on record, being 28 feet above low water. It was one foot above the high water of 1828 and 1844, four feet above that of 1851, and two feet above that of 1867. In latter years the river remained bank-full from the latter part of February until the middle of May; snows during winter and rains in March being excessive. In 1862 the high water occurred in February, and was very destructive. During the 34 years between 1833 and 1866 six crops have been lost from overflow. At Terre Haute the high water of 1867 was 1.3 feet below the high water of 1858, the highest on record, culminating on February 21 with river 25.3 feet above low water. The rise began on February 9. At Vincennes the river was out of its banks from February 19 to March 2, inclusive, being highest on February 22–23, when it was 0.5 feet higher than ever known before, (25 feet above low water.) Snows and rains had prevailed during the winter.

Caseyville, Ky.—In 1867 the river began rising on February 1, and reached highest point on March 1, being then 0.5 feet above high water of 1832, and 4.1 feet above high water of 1847. The second rise culminated about March 16, and was 0.4 feet below the first, the fall between the two rises being about three feet; downfall during the winter was without precedent.

Cumberland river.—At Carthage the high water of 1867 was seven feet below that of 1826, 4 feet below 1847, and 1 foot below 1862; and was 40 feet above low water. The rise began on February 25, culminated on March 9–12, subsided 8 feet, but again swelled until March 25 or 26, when it finally fell. At Nashville the flood was 0.8 feet below the high water of 1847 on March 13. On Harpeth shoals, 30 miles below, where extreme low water gives a depth of only 13 inches, this flood stood 64 feet. The rise there began on February 28, the water standing 19 feet. It culminated on March 13. After March 16 the river fell very rapidly, with no second swell. It was over banks (above about 55 on shoals) from March 8 to March 16 inclusive, indicating a flood of unusually long duration. At Eddyville the flood was 1.2 feet above high water of 1847 on March 18, the highest floods previously on record there.

Tennessee river.—The flood of 1867 far exceeded all precedents for the past 90 years. It consisted of one great rise due to furious rain storms which covered its entire valley, particularly the mountain region. At Kingsport, on the Holston, rain fell nearly continuously from February 28 to March 7. At noon of March 7, the river attained its highest point, being 30 feet above low water and 4 feet above any other flood. In 20 hours it fell 10 feet. At Strawberry Plains the freshet rose 52 feet above low water, and 11 feet above any other flood. At Knoxville the river rose 12 feet above high-water mark of 1847, and was over 50 feet deep. Near Harrison, the Tennessee rose 15 feet above any known water mark. At Chattanooga the rise began on March 4, overflowed banks on March 8, and attained height on March 11, being 53 feet above low water and 15.5 feet above the high water of 1847, the highest on record. The river fell with equal rapidity to usual level. Rains were incessant for four days before highest water. At Bridgeport, Alabama, the flood reached its maximum, 11.5 feet above all former marks, late on March 12. At Bellefonte, Alabama, rise began on March 5, and was highest on March 13, when it was 9.1 feet above high water of 1847. At Decatur, the freshet culminated on March 16, being six or seven feet above any other flood; it remained stationary for two days. At Florence, Alabama, the freshet began on March 1, culminated on March 15, falling very slowly for three days. It stood six feet above all other floods. At Eastport it stood seven feet above any known flood. At Johnsonville the flood culminated on March 22, being 3.8 feet above all previous water marks, and 44.8 feet above ordinary low water; by April 1 it had returned within banks. At Paducah the rise culminated on March 21. The destruction of property and life occasioned by this flood was beyond parallel in the history of the Tennessee valley.

Metropolis, (40 miles above Cairo.)—The February rise of 1867 was 1.5 feet below high water of 1847. The river remained nearly stationary until March 8, when it began to swell; it culminated on March 20 at a point above all previous water marks, being 3 feet above high water of 1862, and 4.4 above that of 1847. The fall was rapid.

Mound City, (6 miles above Cairo.)—The flood of 1867 rose 0.9 feet above high water of 1862.

UPPER MISSISSIPPI RIVER.

Fort Ripley.—No rain fell between November 26, 1866, and April 13, 1867; no spring rise in 1867.

Winona.—There were not 12 hours of rain between January 6 and April 13, 1867; no early spring rise, the river being frozen in March. The highest points reached between October 4, 1866, and April 22, 1867, were on December 24, when the river was 6.6 feet above low water, and on April 22, 1867, when it was 9.4 above low water and rising. The total range here is about 14 feet.

Illinois river.—At La Salle, 18 inches of rain fell between February 1 and June 3, 1867. A freshet, rising within one foot of top of levees, culminated on February 17, 1867, being 26 feet above the low stand of February 3; the river remained high, but oscillating, until June 3, (date of letter,) the lowest point being about seven feet above low water on May 19.

MISSOURI RIVER.

Fort Randall.—The river remained frozen until April 9, 1867, being at low-water mark, or about five feet deep. It began rising on April 12,

and on April 17–19 it was bank-full, but it fell at once to usual summer level. The freshet did no damage. No local rains fell for the five months ending April 16.

Niobrara.—In March, 1867, about 2.5 feet of snow fell, and on April 17 about three inches of rain. On April 1 the river was at usual summer level, but a sudden and excessive (10 feet) freshet in the Niobrara raised it rapidly. Combined with the rise above, this freshet raised the Missouri on April 18 to a point 1.5 feet below the high water of 1858, and 2 feet below the high water of 1866, the highest recorded flood.

Omaha.—Ice broke up on April 7, 1867, the river being very low. The melting snows caused it to rise rapidly until, on April 23, it stood 18.8 feet above extreme low-water mark, (1863.) It was 1.9 feet above high water of 1866, and 0.1 foot above that of 1844. By April 30 it had receded within banks, a fall of about seven feet. The levees were completely overflowed.

South Platte river.—At Fort Sedgwick much snow fell in March, 1867. The mean temperature was very cold; and the river there, about half a mile wide and 2 feet deep, at low water, was frozen solid. The ice broke up on April 8 with a little freshet.

St. Joseph.—The ice broke up on February 23, 1867, causing a little rise of 5 feet, due to melting snow and ice gorges. The highest stand in February or March was 12 feet within banks.

Leavenworth.—The Missouri was very low during March, 1867. Quite a freshet occurred between April 10 and May 9, the river being at these dates 5.5 feet above low water mark. At its height, on April 27th and 28th, it stood 18.6 feet above low water, and 0.7 feet above the mark of April, 1866. No damage was done by freshets locally.

ARKANSAS RIVER.

Fort Smith.—The high water of June, 1866, was 3.8 feet above that of 1862, and 2 feet above that of 1867.

Little Rock.—There were many rains and snows in March, 1867, which, however, flooded the White, Little Red, Washita, and Saline rivers, heading near the Arkansas, more than they did that river itself. Before the storms occurred the latter river was about 3 feet above low water; in two days after the rains began the river commenced to rise so rapidly that in about three days it rose 25 feet, to its highest point, which was 6 feet below high water of 1833, and 1.1 feet below that of August, 1866. The river rapidly subsided, doing little damage above the influence of back-water from the Mississippi.

Pine Bluffs.—In 1867 the river did not reach the top of its banks by some feet. The flood of 1833 is the greatest recorded. Next to it is that of 1844, which was occasioned by a general freshet in all the tributaries. The river began rising late in March; on May 8 and May 20 it reached the mark of 1833; about July 1 it retired within banks; on August 10 it attained low-water level. The construction of levees on the lower Arkansas, since 1844, has affected the relative heights of later floods.

Heckatoo plantation, (15 miles above South Bend.)—In 1862 there was no great flood in Arkansas river itself. In 1867 the waters rose 0.3 foot above high water of 1866, which reached a higher point than any other flood since 1844. There were several crevasses near and below this plantation in 1867.

South Bend.—The date of highest water in 1867 was June 7. About four miles of gaps in Arkansas river levees in vicinity. A moderate flood in Arkansas river at date of high water in 1862.

RED RIVER.

Cut-off Landing, (nearly west of Lewisville, Arkansas.)—There was an overflow in May and June, 1867, damaging about three-fourths of crops. The highest water was about 0.3 feet above high water in June, 1865, and April, 1866.

Shreveport to Alexandria.—On June 22, 1867, the river was falling fast. The flood had caused very considerable damage in this region.

41ST CONGRESS, 1st Session. | SENATE. | MIS. DOC. No. 9.

MEMORIAL

OF THE

NEW YORK AND ANTWERP MAIL STEAMSHIP CO.,

ASKING

That American steamships employed in carrying the mails may be released from the payment of all dues payable to the United States.

MARCH 15, 1869.—Referred to the Committee on Commerce and ordered to be printed.

MEMORIAL OF THE NEW YORK AND ANTWERP MAIL STEAMSHIP CO.

To the Congress of the United States:

Your memorialist respectfully states that the New York and Antwerp Mail Steamship Company was duly organized in the State of New York, under the general laws of said State, in 1866; that said company has made a contract with the Belgian government for the transportation of the mails from Antwerp to New York, for a period of ten years; that the government of Belgium with great liberality has granted to the company the privilege to use, under said contract, steamships built in and sailing under the flag of the United States, and has also released the steamships of the company from all dues payable to the treasury of Belgium.

Your memorialist respectfully states, and is prepared to prove by indisputable evidence, that steamships built in the United States cost nearly double the amount of a steamship built in Great Britain, and there is not now one American steamship engaged in the transatlantic service, while nearly 600 round voyages were made last year between the United States and Europe by steamships built and owned in Europe, and not less than $50,000,000 in gold were received during that period by the owners of these foreign-built steamships for freight, passengers and mails.

Your memorialist asks that steamships which were built in the United States and which may be used in transporting the United States mails to Europe under contract with the Post Office Department may be released from all dues of whatsoever kind and nature payable to the United States, and your memorialist further prays that the materials used in constructing and fitting out any steamship in the United States, to be employed by this company or by any other company or person under such a mail contract, may be released from all dues, whether for customs or internal revenue, payable to the United States.

The act of May 28, 1864, establishing a mail steamship line to Brazil, released the steamships of that line from custom-house dues and port charges, and granted an annual subsidy of $150,000 to it.

The taxes on materials used in constructing steamships are a protective tariff in favor of foreign-built steamships. True, our steamship builders are protected by the prohibition of the importation of foreign-built steamships; but what protection is that? It only protects them in

our coast trade, where foreign steamships cannot trade. Foreign steamships, built at half the cost of American steamships, bring to our ports goods, emigrants, and mails, and take back our goods and our mails. They do all the transatlantic service. The ocean is free, and we cannot levy a tax on them in favor of our own built steamships. They have equal rights with our steamships to do this service, which they have monopolized and in which they are protected by our laws, which impose taxes on materials used in building steamships.

Tariff for protection will apply to every domestic manufacture except to steamships to be engaged in the trade on the ocean, which is free to all the world; and every tax on materials used in building steamships for that free ocean trade is a protection of the foreign-built steamships.

Remove this protection of foreign-built steamships, and soon our foundries will teem with workmen, and steamship after steamship will be launched from our now deserted ship-yards; but continue this protection of foreign steamships, and soon the tools and machinery of the few foundries that yet remain will become rusty and useless, and our skilled artisans will lose their skill and be compelled to seek other employment, and if the time should come again when our country should need for its defence ocean steamships, she will be found as she was in 1861, when rank rebellion reared its hideous head. The remission of these dues would not take one dollar from the treasury of the United States, for the reason that without the remission the steamships would not be built, hence the dues could not be received by the government; but by the remission of the dues the steamships that would be built would cause to remain in the United States all the money received for freight, passengers, and mails transported by them, and thousands of our citizens would be engaged creating capital, and surely these gains would tenfold compensate the treasury of the United States for the remission of the dues.

During the year 1868 there were 600 departures of steamships from our ports for Europe, that is to say, 600 round trips of steamships between the United States and Europe, and not a single one under the American flag. Foreign steamers monopolize the whole of a business which is sustained in large part by our mails and our commercial products.

The actual average cost of one of these round trips is estimated by competent authorities at $45,000, making the total actual cost of this service $27,000,000. These steamship lines must therefore receive $27,000,000 to pay their running expenses. Of course they must receive vastly more than that to cover interest on capital and mercantile profits, not less probably than $50,000,000.

To maintain an equality with the nations with which we interchange products, we ought to furnish one-half of the bottoms in which these products are transported. If 600 round trips are made from our ports, 300 of them should be in American steamships, and if $50,000,000 of freight and mail money are paid to steamships between Europe and the United States, $25,000,000 should be earned and received by American enterprise and capital.

The prostration of the building of steamships in this country is complete. A recent letter from the largest foundry owner in New York says:

> In and before 1861 there were 7,000 skilled workmen engaged in the various branches of ship-building in and around New York city. At this time 2,000 cannot be found. There being no work for them, they have disappeared. The great taxes on materials used in constructing engines and steamships operate to cause the closing of nearly all the foundries and ship-yards, and unless some aid be extended to this branch of our manufactures, in a few years all the foundries must be closed.

In a few years the art of building steamships will die out if not fostered, and it will be impossible to find workmen to use the raw materials.

This condition of things, as described by the highest authority, and without a particle of exaggeration, deserves the immediate and urgent attention of the American Congress. There is no time to be lost.

Your memorialist as conclusive evidence of the decline of the steamship tonnage of the United States engaged in foreign trade, refers to the official figures in the report of the Secretary of the Treasury, Commerce and Navigation for 1867, page 334.

1855, United States tonnage in foreign trade registered.. 115,000 tons.
1860, United States tonnage in foreign trade registered.. 102,608 tons.
1865, United States tonnage in foreign trade registered.. 69,539 tons.
1867, United States tonnage in foreign trade registered.. 32,593 tons.

Your memorialist quotes the following from the report of the Special Commissioner of Internal Revenue for 1868, pages 68 and 69.

Average excess of wages paid in iron foundries, and machine shops in the United States in 1867 and 1868, over those paid for similar labor in England, 58 per cent.

The following are specific illustrations of the average weekly wages paid to the following enumerated employés in this branch of industry in the countries above referred to.

Occupation.	In U. S. gold.	In England.	In Belgium.
Moulders	$11 50	$8 00	$5 40
Machinists	11 54	7 00	3 60
Boiler-makers	12 64	7 50	4 20
Blacksmiths	12 32	7 12	4 12
Engineers	11 20	7 50	.....
Laborers	7 03	4 50	2 40

THE PRICE OF PUDDLING IRON.

New England, per ton	$5 00 currency.
New York, per ton	5 50 currency.
New Jersey, per ton	6 00 currency.
Average price in United States, in gold	4 37½ per ton.
In England do	2 37½ per ton.
In Belgium do	1 20 per ton.

In 1855, out of 13 steamships in the European trade, 9 were American, making 60 out of 85 trips, carrying 15,258 passengers of the 21,568 carried by steamers; but in 1859, of the 46 steamers engaged in that trade, only 5 were American, carrying 9,180 out of 61,010 passengers by steamers; at the same time the American steamers carried mails in 1855, the postages on which amounted to $892,626, and the Cunard line carried only $411,288 of postages; in 1859, American steamers carried only $199,639 of postages, while foreign steamships carried $1,238,810. In 1868, there were made 610 round trips by foreign steamships carrying mails, the postages on which amounted to $1,706,467, and not one American steamship was engaged in the transatlantic trade.

These facts are too humiliating for an American to dwell upon.

And your memorialist will ever pray.

WM. C. BARNEY,
Manager of New York and Antwerp Mail Steamship Co.

MARCH 15, 1869.

41ST CONGRESS, 1st Session. } SENATE. { MIS. DOC. No. 10.

RESOLUTIONS

OF THE

LEGISLATURE OF MICHIGAN,

IN FAVOR OF

Granting the right of way and aid for the purpose of building a railroad from the shore of Green bay, or Bay De Noc, to the iron district in Menomonee county.

MARCH 16, 1869.—Referred to the Committee on Public Lands and ordered to be printed.

JOINT RESOLUTION requesting our members of Congress to use their influence in procuring the passage of an act granting the right of way and aid to the State of Michigan for the purpose of aiding in building a railroad from the shore of Green bay, or Bay De Noc, to the iron district in Menomonee county.

Whereas large deposits of iron ore have, within the last two years, been discovered in the interior of Menomonee county; and whereas the whole country between the shore of Green bay and said deposits of iron ore is a wilderness, with no roads or settlements; and whereas to open up said mines, and to make them useful to this State and nation, it is necessary that a railroad be constructed to the same; and believing that not only the State, but the whole country, will be benefited by opening said mines to the world: Therefore,

Resolved by the senate and house of representatives of the State of Michigan, That our senators and representatives in Congress be requested to use all proper efforts for the passage of an act granting the right of way through lands of the United States, and aid for the construction of a railroad from said deposits of iron ore to the most feasible point on Green bay, or Bay De Noc: *Provided*, That if the aid asked shall be granted in the form of an appropriation of lands, said lands shall not be taken out of market, but shall be held subject to sale, and the proceeds thereof held as a fund in trust, to be applied in aid of said railroad.

Resolved, That the governor be requested to transmit copies of the foregoing preamble and resolution to our senators and representatives in Congress.

MORGAN BATES,
President of the Senate.
J. J. WOODMAN,
Speaker of the House of Representatives.

EXECUTIVE OFFICE, *Lansing, March* 4, 1869.

Approved:

HENRY P. BALDWIN.

41ST CONGRESS, 1st Session. | SENATE. | MIS. DOC. No. 11.

RESOLUTIONS

OF

THE LEGISLATURE OF MASSACHUSETTS,

RATIFYING THE

Amendment to the Constitution of the United States known as Article XV.

MARCH 19, 1869.—Ordered to lie on the table and be printed.

COMMONWEALTH OF MASSACHUSETTS.—IN THE YEAR ONE THOUSAND EIGHT HUNDRED AND SIXTY-NINE.

RESOLVES relative to an amendment of the Constitution of the United States.

Whereas the legislature has received official notification of the passage by both houses of the fortieth Congress of the United States of the following proposition to amend the Constitution of the United States, by a constitutional majority of two-thirds thereof, in words following, to wit:

A RESOLUTION proposing an amendment to the Constitution of the United States.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, (two-thirds of both houses concurring,) That the following article be proposed to the legislatures of the several States as an amendment to the Constitution of the United States, which, when ratified by three-fourths of said legislatures, shall be valid as part of the Constitution, namely:

ARTICLE XV.

SECTION 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States, or by any State, on account of race, color, or previous condition of servitude.

SEC. 2. The Congress shall have power to enforce this article by appropriate legislation.

Therefore,

Resolved, That the said proposed amendment to the Constitution be, and the same is hereby, ratified by the legislature of the commonwealth of Massachusetts.

Resolved, That certified copies of the foregoing preamble and resolution be forwarded by the governor to the President of the United States, the presiding officer of the United States Senate, the Speaker of the United States House of Representatives, and the State Department of the United States.

SENATE, *March* 9, 1869.

Passed. Sent down for concurrence.

S. N. GIFFORD, *Clerk.*

HOUSE OF REPRESENTATIVES, *March* 12, 1869.

Passed in concurrence.

W. S. ROBINSON, *Clerk.*

COMMONWEALTH OF MASSACHUSETTS,
SECRETARY'S DEPARTMENT,
Boston, March 17, 1869.

I certify the foregoing to be a true copy of the original resolve. Witness the seal of the commonwealth hereunto affixed.

[SEAL.]

OLIVER WARNER,
Secretary of the Commonwealth.

41ST CONGRESS, 1st Session. | SENATE. | MIS. DOC. No. 12.

RESOLUTIONS

OF

THE LEGISLATURE OF NEW JERSEY,

IN FAVOR OF

An appropriation for improving the navigation of the Delaware river.

MARCH 20, 1869.—Referred to the Committee on Appropriations and ordered to be printed.

SENATE JOINT RESOLUTION No. 3.

JOINT RESOLUTION relative to the navigation of the Delaware river.

Whereas the navigation of the river Delaware to the city of Trenton, New Jersey, at the head of tide-water, is a matter of much commercial importance to a large and growing population of the State of New Jersey; and whereas the opening of said navigation for steamboats and other vessels of moderate tonnage is entirely practicable: Therefore, be it,

1. *Resolved by the senate and general assembly of the State of New Jersey*, That our members of Congress, both in the Senate and House of Representatives, be, and are hereby, requested to procure, if possible, an appropriation from Congress for the purpose of removing obstructions and improving the navigation of the river Delaware between White Hill and the city of Trenton, at the head of tide-water, in the State of New Jersey.

2. *And be it resolved*, That the governor be requested to furnish a copy of the foregoing preamble and resolutions, as soon as possible, to the members of Congress of the United States from New Jersey.

41ST CONGRESS, 1st Session. | SENATE. | MIS. DOC. No. 13.

RESOLUTIONS

OF

THE LEGISLATURE OF MAINE,

RATIFYING

The amendment to the Constitution of the United States known as Article XV.

MARCH 20, 1869.—Ordered to lie on the table and be printed.

STATE OF MAINE.—IN THE YEAR OF OUR LORD ONE THOUSAND EIGHT HUNDRED AND SIXTY-NINE.

AN ACT to ratify an amendment to the Constitution of the United States, proposed to the legislatures of the several States by a resolution adopted at the last session of the 40th Congress, in the year of our Lord one thousand eight hundred and sixty-nine.

Be it enacted by the senate and house of representatives in legislature assembled as follows: Whereas, at the last session of the 40th Congress of the United States of America, held at Washington, in the District of Columbia, in the year of our Lord one thousand eight hundred and sixty-nine, it was resolved as follows, to wit:

Be it resolved by the Senate and House of Representatives of the United States of America in Congress assembled, (two-thirds of both houses concurring,) That the following article be proposed to the legislatures of the several States, as an amendment to the Constitution of the United States, which, when ratified by three-fourths of said legislatures, shall be valid as part of the Constitution, namely:

ARTICLE XV.

SECTION 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color or previous condition of servitude.

SECTION 2. The Congress shall have power to enforce this article by appropriate legislation.

Be it therefore enacted by the senate and house of representatives of the State of Maine in legislature assembled as follows, viz.:

SECTION 1. That the said proposed amendment be, and the same is hereby, ratified on behalf of the State of Maine.

SECTION 2. This act shall take effect when approved.

IN THE HOUSE OF REPRESENTATIVES,
March 11, 1869.

This bill having had three several readings, passed to be enacted.

JOSIAH HAYDEN DRUMMOND,
Speaker.

IN SENATE, *March* 11, 1869.

This bill having had two several readings, passed to be enacted.

STEPHEN D. LINDSEY, *President.*

MARCH 12, 1869.

Approved.

JOSHUA L. CHAMBERLAIN, *Governor.*

STATE OF MAINE,
OFFICE OF SECRETARY OF STATE,
Augusta, March 16, 1869.

I hereby certify that the foregoing is a true copy of the original as deposited in this office.

FRANKLIN M. DREW,
Secretary of State.

41ST CONGRESS, 1st Session. | SENATE. | MIS. DOC. No. 14.

LETTER

OF

J. GREGORY SMITH,

President of the Northern Pacific railroad, addressed to Hon. George F. Edmunds, enclosing two communications in relation to the treaty with Great Britain concerning the island of San Juan.

MARCH 22, 1869.—Ordered to lie on the table and be printed.

WASHINGTON, *February* 20, 1869.

DEAR SIR: As the consideration of the treaty recently made by the United States minister, Mr. Johnson, embracing the San Juan island question, will soon be, if it is not already, before the United States Senate, I beg leave to hand you two communications bearing upon the subject which contain much valuable information, as the authors are personally familiar with the Pacific coast; the one from the Hon. George Gibbs, who has resided in Washington Territory some 17 years, having been connected with the northwest boundary survey as geologist; and the other from G. Clinton Gardner, esq., the assistant astronomer and engineer of the expedition.

These gentlemen speak from personal knowledge, Mr. Gardner having himself surveyed the water-line between British America and the United States, as well as all the channels existing between the various islands in the gulf of Georgia and the archipelago of de Haro.

This was done under the direction of the Hon. Archibald Campbell, the United States commissioner of the northwestern boundary survey, who is now in this city, and can give much valuable information upon this subject.

I trust no action of the Senate will be taken which shall surrender the island of San Juan to Great Britain.

I am, very respectfully, yours,

J. GREGORY SMITH,
President Northern Pacific Railroad.

HON. GEO. F. EDMUNDS,
United States Senate.

WASHINGTON, *February* 4, 1869.

SIR: In reply to your letter of yesterday, on the so-called "San Juan question," I have to say, that I am utterly opposed to Mr. Johnson's convention, referring the title of the island to the "President of the Swiss Confederation."

In the first place, I think it derogatory to the honor of the United

States to refer the question at all. The joint occupation of the territory on the Pacific was terminated by the treaty of 1846, the line of the 49th parallel being adopted as the basis; but as this line, prolonged to the sea, would cut off a part of Vancouver island, Mr. Buchanan fatally consented to deflect it through the gulf of Georgia and the strait of Fuca, using the words, "the middle of the channel which separates the continent from Vancouver's island." It was perfectly well understood at the time that the compact group of intermediate islands, of which San Juan is one, and which lies entirely south of the 49th parallel, would belong to the United States; and Mr. Benton expressly referred to the fact in the debate when urging the ratification of the treaty. Subsequently, however, the British, with whom it seems impossible to make a treaty that shall be a finality, started the claim to the entire group, insisting that the comparatively insignificant Canal de Rosario, which merely separates the continent from those smaller islands, was to be taken as the one "which separates the continent from Vancouver's island," instead of the larger and deeper Canal de Haro, lying nearer to Vancouver island. Their motive was obvious enough. They saw that this group, taken together, could be completely fortified; that in its land-locked harbors all the navies of the world could lie safely, and that the United States would then possess a naval position covering at once the gulf of Georgia, Fuca strait, and Puget sound, thus holding England in check in those waters.

On the whole line of our coast, from San Diego to the strait of Fuca, San Francisco is the only harbor at once accessible and defensible. The ownership of the southern end of Vancouver island gave to Great Britain Barclay sound, one side of the strait of Fuca, with the admirable harbor of Esquimalt, and the islands of the Saturna group, bordering the easterly side of Vancouver island. The islands nearer the continent, of which San Juan is the most western, are our only protection against this immense advantage, and this she wishes to deprive us of.

Great Britain, in fact, seems to think herself entitled to all the strategic points of the world. Malta and Gibraltar and the Cape of Good Hope are but instances of this grasping spirit of dominion. If we now give up our position on the gulf of Georgia, the Sandwich Islands will be the next point coveted. She knows well that this great inlet, the strait of Fuca, and the waters opening into it, Puget sound, and the gulf of Georgia, must be the commercial centre of the North Pacific. So far it has had no development, except as the source from which the lumber of the countries bordering on that ocean has been obtained. But it is the nearest point to China and Japan; it is the nearest point to the Canadas, to New England, and to New York. The power that owns it will control absolutely, by its interior railroads, the trade of one-third of the continent, independent of that of Asia. If the United States carries through this enterprise of the Northern Pacific railroad, Great Britain will not undertake another route, or if she does, it will be a failure. In the acquisition of Alaska, an act of statesmanship second only to the purchase of Louisiana, we have flanked the British territories on the north. I trust we shall not lose the vantage-ground thus obtained.

The idea undoubtedly existing in the minds of those who put forth this claim was, that sooner than make the subject an occasion of war, we would compromise by the adoption of an intermediate line, the channel known on our maps as "President's passage," which separates San Juan from Orcas and Lopez islands, and in this way they would break the continuity of the chain, and in fact steal the key of the lock. They

hoped also to gain the cession of Point Roberts, a part of the continent falling south of the parallel, and a commanding position on the gulf of Georgia, near the entrance to Fraser river.

The danger of war was a bugbear. It is now known that, when the original treaty was made, the British government would have yielded the whole of Vancouver island rather than fight; and that later, if firmly met, she would have receded from her claim to the San Juan group. The movement of General Harney, in taking military possession of San Juan, was the right one. There was a vast deal of bluster and threatening on the part of the British, but there would have been no fighting to get possession of it; but Mr. Buchanan, then President, made another fatal mistake. He sent out General Scott to compromise once more, and a new joint occupation was agreed upon. The duplicity of the British in this matter was shown during the joint survey of the northwest boundary. While the American commissioner, Mr. Archibald Campbell, had full powers to settle the line, his English colleague, Captain Prevost, of the British navy, had secret instructions not to settle unless San Juan island was yielded, and the negotiations were continued for months in vain before the reason leaked out.

The idea seems to prevail that England, becoming indifferent to the possession of these western territories, only wants to be "let down gracefully." This mistake will prove as ruinous as the others. She never was more determined to hold on to these points than now. If she is to lose her possessions on the Pacific, as she must eventually, she wishes to make us pay the heaviest penalty for the acquisition. She will get all the higher price for holding San Juan and Point Roberts. The Reverdy Johnson treaty shows this in every line. The question of the true construction of the treaty of 1846 is *not* the one submitted. The story is told in the second and in the separate articles. The second article reads thus:

> If the referee should be unable to ascertain and determine the precise line intended by the words of the treaty, it is agreed that it shall be left to him to determine upon *some* line which, in his opinion, will furnish an *equitable* solution of the difficulty, and will be the nearest approximation that can be made to the accurate construction of the treaty.

And the "separate article" (a perfect anomaly in diplomacy) provides that this treaty shall not go into operation or have any effect until the question of NATURALIZATION, now pending, shall have been satisfactorily settled. If that does not mean that San Juan island (and Point Roberts too) is to be given up as a consideration of the naturalization treaty, it has no meaning.

The settlement of this question is left to the arbitration of the "President of the Swiss Confederation." We might well hesitate at the submission of so important a matter to a person of whose functions and abilities we know nothing, who may or may not be a lawyer or a statesman. But what shall we say when we find that there is no such person in existence? There is NO "President of the Swiss Confederation." There are presidents of the *Conseil National*, of the *Conseil des Etats*, and of the *Conseil Fédéral;* three presidents after a fashion; that is, presiding officers of three different bodies, who are elected annually. But to which of them is this subject submitted? Is it to President Kaiser, of Soleure, to President Æppli, of St. Gall, or to President Dubs, of Zurich?

And why was it not submitted (if there is to be any submission) as a question, pure and simple, of the interpretation of the treaty of 1846? Are we to compromise every fresh claim that Great Britain may set up on any occasion by a new concession? If there is a real doubt about the true intent and meaning of that treaty, let us submit it *as such*, and submit it to some authority, high enough, learned enough, and responsible enough, to decide it at once.

Submit it for example to the consideration of some body of jurists of eminence and character; to the "courts of cassation" of France, the ultimate law court of appeals of the French empire; to the faculties of law of Heidelberg or Berlin, rather than to any sovereign, or potentate, or president, who may be governed by ideas of what is politic, or of what is "equitable." Such a reference would be, it is true, a novelty in the affairs of nations; but we have a parallel in the jurisdiction of our own Supreme Court. One hears there, as the great French jurist de Tocqueville remarked with admiration, the cause called (for example) of the State of Massachusetts *vs.* the State of New York. Why not, then, in a case like this, of the interpretation of a treaty, or, as in that of the Alabama claims, one of the interpretation of international obligation, submit it to such courts? Our own Supreme Court might, in like manner, be the arbiter between other nations.

Whether or not the court of cassation would assume this office, of course I do not know; I merely present the suggestion; but if it did, its intervention would elevate the consideration of the great courts of justice throughout the civilized world, and would lessen the danger of wars, springing from the uncertainty of diplomatic controversy, and from the interests or prejudices of rulers.

So far as the Northern Pacific railroad is concerned, one of its western termini must ultimately be on Puget sound, and it will never do to leave it entirely under British guns. More than that, the command of the sound involves that of the Columbia river, for two days' march from its head would carry a hostile force to the mouth of the Cowlitz, with no possible obstruction, except such an interior line of forts as the government never would consent to keep up, and the population of the country would not justify. It is far better even to leave the island as it stands, in joint occupation, until we are ready to take it.

I have said nothing on the importance of the route of the Northern Pacific railroad; that must speak for itself. Its completion is the conquest of British America. What is called "the fertile belt," the country of the Saskatchawan and the Red River of the North, becomes *ex necessitate rei* an appanage of the United States by its construction. Its eastern terminus is of course the city of New York, which thenceforth supersedes London as the commercial capital of the world.

I am, very respectfully, your obedient servant,

GEORGE GIBBS.

Hon. J. GREGORY SMITH.

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566 NEW JERSEY AVENUE, WASHINGTON,
February, 4, 1869.

DEAR SIR: It gives me pleasure to state, in reply to your letter, that any information in regard to the islands near our northwest boundary in my possession is at your service.

In our conversation a few evenings ago I called attention to the importance of the islands between Vancouver island and the main-land as an offset in a strategical point of view to the southern portion of Vancouver island, which, it is to be regretted, was not placed within our territory by extending the 49th parallel across to the Pacific ocean. This parallel of north latitude extended west from the gulf of Georgia would have given us one-quarter of Vancouver island, and on the Pacific shore, as it crosses the northern part of Barclay sound, we would have been in possession of its harbors, as well as those south and east of it on the

island coast. The most important harbors, and in fact the only ones, in the strait of Juan de Fuca are on the Vancouver island shore, for on the south side of Fuca strait there are but a few open roadsteads.

At the entrance of Fuca strait, on the north side, there are also extensive fishing banks, extending west, in from 40 to 100 fathoms water, which at no distant day will rival those of Newfoundland; and for fishing purposes the harbors formed by the numerous islands studding Barclay sound are most convenient.

Barclay sound is the outlet to a greater portion of Vancouver island, which is drained through the Alberni canal, that extends 25 miles through a mountainous range to the basin, as it were, of the island, a level country heavily timbered and watered by a large stream that receives its supply from a chain of lakes penetrating still further north.

These acquisitions would have been of great value to American interests, being at the entrance of and upon the Juan Fuca strait, that leads to the extensive waters a short distance east; and now, unless we secure San Juan island, with its harbor, the commerce of this vast inland sea will be, to a great extent, paralyzed, if not controlled, by an opposing naval power.

These islands, extending from the 49th parallel south to the strait of Juan de Fuca, have an area of about 355 square miles; and the principal continuous channels south to the Fuca strait may be stated as follows, viz:

1. Through Portier Pass south by Swanson channel and the Canal de Haro, leaving 90 square miles of islands to the west and 265 square miles to the east.

2. Through Active Pass south by the Swanson channel and the Canal de Haro, leaving 110 square miles to the west and 245 to the east.

3. Through the Canal de Haro, leaving 145 square miles to the west and 210 to the east.

4. Through President's passage, Ontario roads, and Little Belt passage, leaving 210 square miles to the west and 145 square miles to the east.

And finally through Rosario strait, placing 310 square miles to the west, or all the islands with the exception of Cypress, Guemes, Sinclair, Lummi, and a few smaller ones, comprising only about 45 square miles.

In the geographical memoir published in executive document of Senate, No. 29, 2d session 40th Congress, a full description of these islands is given, with a map and cross-section showing conclusively "the channel which separates the continent from Vancouver's island." In the construction of that map, tracing out each 10-fathom curve, it appears that the strongest currents are from the gulf of Georgia south to the Fuca strait, through the two main channels, the Canal de Haro on the west and Rosario strait on the east; and in order to show at a glance nature's dividing line the 10-fathom curves as far as the 70th fathom have been shaded by sanding; and using the map to illustrate the channel question, I suggested following the strongest current, and gave the comparison of the two channels that is more fully stated under the heading of "channels" in the geographical memoir.

The position of these islands bears an important relation to the terminus of the North Pacific railroad, if that is to be upon the waters of Puget sound. Independent of their commanding position as naval or military stations, controlling, as they will, the principal outlet of Washington Territory, they of necessity will be the outlet for all that portion north of the Skagit river; and to leave that question to arbitration is to suggest an equal division.

It has been and doubtless is still the intention of the English govern-

ment to have a Pacific railroad from Canada built, and ultimately to carry their China and India trade of the Pacific through the British possessions; and knowing as we do the advantages they have for that enterprise, it behooves us to use every effort to first occupy that ground, for, if it is of advantage to them, how much more so is it to us. As to the country on the west, the passes north of the 49th parallel, in both the Cascade and Rocky mountains, are lower and easier of access than those within our territory. Following the Fraser river, and its Lillowit or Harrison River branch, thence crossing to the upper Fraser, they have a low pass to the navigable waters of the upper Columbia river. So the trade that we now carry on with the gold mines of the Columbia River valley, by the navigation of that river for 250 miles north of the 49th parallel, will be carried west through British Columbia. These mines have yielded as much as $500 per day to the men for weeks, and from a single claim over $100,000 of gold has been taken. These are the local inducements that the English have for building a Pacific railroad, and they have been constantly at work to ascertain the most practicable route by which they can connect their gold fields with the rich agricultural country of the Saskatchewan, that only awaits an outlet, when its resources will be rapidly developed.

In their route from Canada the only difficult portion is that north of the lakes in reaching the Red River of the North. Yet there they will have the navigation of the lakes; so that will not prevent them from establishing their route, and making the east and west terminus two great depots of British trade, drawing to them at the same time the resources of our whole country along the boundary from Lake Superior to the Pacific ocean. Whereas we, by building the North Pacific railroad, will draw the wealth of their country into our coffers, as we are now doing, by the navigation of the upper Columbia, and the trails opened by the northwest boundary surveying parties to the Kootenay gold fields, and eventually we will fall heir to all British possessions. It therefore becomes a necessity that we should have a road near our northern border, not only as the most direct route to China, India, &c., but to save our own resources, or they, with the vast Saskatchewan and British Columbia, will be drained west over the islands now in dispute, and via Victoria, Vancouver island, out through the Fuca strait, giving England the control of that commerce. Thus the vast lumber trade of Puget sound, and the limestone and coal of the islands, will be lost to American interests, to say nothing of the fisheries that are soon to become the most important of the world.

If that country had been better known at the commencement of the discussion of the Oregon boundary, instead of the talk about trading all Oregon for the Newfoundland fisheries, our rights to the claim for 54° 40′ would have been insisted upon, which would have given us by far more extensive fishing grounds than those of the Atlantic.

With regard, I remain your obedient servant,

G. CLINTON GARDNER.

Gov. J. Gregory Smith,
Ebbitt House.

RESOLUTIONS

OF

THE LEGISLATURE OF MICHIGAN,

IN FAVOR OF

A grant of land to aid in the construction of the Mineral Range railroad.

MARCH 22, 1869.—Referred to the Committee on Public Lands and ordered to be printed.

JOINT RESOLUTION asking the general government for a grant of land to aid in the construction of the Mineral Range railroad.

Whereas the development of the mineral resources of the Lake Superior region of the State of Michigan has become a subject of national importance; and whereas the greater portion of the mineral range of said region, extending from Keweenaw Point to the west end of Lake Superior, is distant from a safe harbor, and approachable only by land carriages, the expense of which is so great as to preclude the successful opening and working of the mines; and whereas a company, for the construction of a railroad on said mineral range, has perfected its organization under the laws of the State of Michigan, which company proposes to build said road within ten years; and whereas the construction of said road will open to the markets of the world the inexhaustible wealth of said mineral range, giving employment to thousands of laborers and adding largely to the national revenue; and whereas the national government has adopted the policy of disposing of portions of the public domain as a proper means to develop the resources of the country, and has made liberal grants of lands to aid in the construction of railroads: Therefore,

Resolved by the senate and house of representatives of the State of Michigan, That we respectfully ask the Congress of the United States to grant to the State of Michigan six sections of land for each mile of said road from Copper Harbor to the head of Lake Superior, said lands to be selected from the lands belonging to the general government in the upper peninsula, and authorizing any company that may build said railroad to sell sixty sections of said land upon the completion of every ten consecutive miles of said railroad, or upon the completion of each ten consecutive miles of such railroad the (general) Congress will devote the proceeds of the sale of sixty sections of the land appropriated for the benefit of said road in such manner as they shall consider best calculated to secure the early, entire, and thorough completion of such railroad.

Resolved, That our senators in Congress be instructed, and our representatives requested, to use all honorable means to secure the immediate

grant of said lands, for the purpose set forth in the preamble to these resolutions.

Resolved, That the governor be requested to transmit copies of the foregoing preamble and resolutions to our senators and representatives in Congress.

MORGAN BATES,
President of the Senate.
J. J. WOODMAN,
Speaker of the House of Representatives.

EXECUTIVE OFFICE, *Lansing, March* 13, 1869.

Approved:

HENRY P. BALDWIN.

41ST CONGRESS, 1st Session. | SENATE. | MIS. DOC. No. 16.

MEMORIAL

OF

LEWIS DOWNING,

PRINCIPAL CHIEF OF THE CHEROKEE NATION,

REMONSTRATING

Against the settling of various Indian tribes on the Cherokee domain west of the 96th degree of west longitude.

MARCH 23, 1869.—Referred to the Committee on Indian Affairs and ordered to be printed.

To the honorable the Senate of the United States:

The undersigned, principal chief of the Cherokee nation, would respectfully ask leave to call the attention of your honorable body to the fact that since 1866, as he is reliably informed, treaties have been made with various tribes of Indians, with the view of settling them on the Cherokee domain west of the 96th degree of west longitude. These treaties have been made in plain violation of the Cherokee treaty of 1866, in this, that the Cherokees, so far from having contracted with said Indian tribes for the sale of those lands, were not even consulted as to the price at which the United States has undertaken to dispose of them. In reference to these infringements upon our rights, the Cherokees, prompted by a desire to cultivate harmonious relations with their red brethren as well as with the United States, have preserved a silence and resignation characteristic of a comparatively helpless people who have reposed unbounded confidence in the integrity and good faith of the government.

The country west of the 96th degree thus proposed to be taken away from us without adequate compensation, and turned over to other Indians, has been guaranteed to us by the most sacred and solemn pledges of the United States.

The tragical history of our people cannot fail to awaken a deep interest in every American who is animated by a sincere love of liberty and of country; nor can any true American fail to appreciate the munificence of the Cherokee people, when he calls to mind the fact that the vast territory comprising the States of Maryland, Virginia, Georgia, Kentucky, North and South Carolina, Tennessee, and a part of Alabama, were once our hunting grounds. For our lands east of the Mississippi river, worth to-day, perhaps, $200,000,000, the United States gave us about $2,000,000, and the lands we now occupy, including the outlet west, with the sacred promise, as before stated, that we should never be disturbed in our possession of them, without our consent, while "grass grows and water runs;" and 30 odd years ago the Cherokees were removed thither,

many of them in chains and at the point of the bayonet, and placed in such possession. Notwithstanding the promises of the United States, the Cherokees with sorrowful hearts have seen their lands wrested from them, from time to time, by the strong arm of power, in disregard of law, humanity, or justice. When Kansas was organized into a State, she took from the Cherokees their "neutral lands," estimated at 800,000 acres, and also a strip of land off of our northern border, estimated at 750,000 acres; and now the United States, our guardian and protector, proposes in addition, as we learn with inexpressible pain and grief, to dispose of all our country west of the 96th degree, without our consent, and without adequate compensation, for the purpose of settling other Indians thereon. We feel this treatment the more keenly, because it has been our pride and our boast that we were under the protecting wing of your great and powerful government, whose illustrious example we have endeavored to emulate in its march of civilization, refinement, and religion. Your government asked us to become civilized, and we became so. We have adopted your form of government. We have embraced your religion. We have done everything within our power that you have asked us to do. We have watched and cherished your interests with faithful and devoted hearts. Years ago in your wars with the hostile Creeks and Seminoles we poured out our blood for your government as a child would for its parent. And in the war to suppress the late rebellion almost one-half of our people have been sacrificed upon the altar of your country. Our land is filled with helpless widows and orphans, and our country and our people, war-ridden, poverty-stricken, and stripped even to nakedness, present such evidences of devotion to your government as defy a parallel in history. Yet, notwithstanding our sacrifices and our devotion to your government, and notwithstanding the strong tenure by which we are entitled to hold our lands, (a tenure far better fortified by law than that of any other Indians on the continent,) it would seem by the tardy action of the government toward us that we are doomed to be worse treated than any other Indian tribes, however small and insignificant they may be. Your government treated and paid for the western country of the Choctaws, Chickasaws, Creeks, and Seminoles in 1866. It has treated with all the wild and warlike tribes of the western plains and mountains; and now, will it deal so unjustly and cruelly with the Cherokees, the friends of the United States in war and in peace, as to take away their lands and refuse to treat with them, so that they may be paid for them? We trust not. We shall hope for better things. We are not willing to believe that a government, whose military fame eclipses that of any nation of the globe, would stoop so low as to rob a poor Indian of his legal and moral rights.

Taking this view of our relations with your government, I would respectfully invite your attention to our pending treaty, transmitted by the executive department to your honorable body for ratification in the early part of last summer. This treaty is a necessity to the United States, since provision is therein made that the lands west of 96°, designed for the occupancy of other Indians, shall be paid for; which payment, according to treaties with the Cherokees, is a condition precedent of such occupancy.

In this connection I respectfully beg leave to state that should the government refuse to pay the Cherokees for these lands, and attempt to settle other Indians on them in disregard of the remonstrances of the Cherokees, much trouble between the Cherokees and such Indians will surely follow and possibly lead to dire results. As early as last October my attention was called to the fact that difficulties were imminent between

Indians who claimed a home on our western country and the Cherokees. These difficulties were rapidly assuming a warlike aspect when, in December last, I despatched a delegation to the scene of disturbance to restore and preserve peace until such time as the Cherokees might be able to make some satisfactory arrangement with the government whereby their western country could be occupied by those Indians legitimately and peaceably.

I would beg leave to assure the government, through your honorable body, of the earnest desire of the Cherokee people to carry out all the provisions of their treaties in the utmost good faith, and that I, as their chief, will spare no pains and lose no occasion to preserve and strengthen the happy relations now existing between the Cherokees and the government of the United States; but I deem it my duty to state, most respectfully, that I fear it will be beyond my power to restrain the Cherokees from resisting all encroachments from other Indians.

Respectfully submitted.

LEWIS DOWNING,
Principal Chief of the Cherokee Nation.

WASHINGTON CITY, *March* 22, 1869.

41ST CONGRESS, 1st Session. | SENATE. | MIS. DOC. No. 17.

IN THE SENATE OF THE UNITED STATES.

MARCH 23, 1869.

Submitted by Mr. SPRAGUE, to accompany the bill S. 194, and ordered to be printed.

The liberties and interests of the American people imperatively demand that scarcity of capital and high rates of interest for money shall cease.

Government deposits in the national banks throughout the country are so much capital withdrawn from industrial and productive interests and employed in speculative investments, such employment being a consequence of the short time allowed for deposits, necessarily producing a scarcity of capital and making rates of interest high in industrial and productive operations, which operations cannot be restricted in the use of capital to the time thus limited.

Capital seeks speculative investment in consequence of absence of profits in industrial and productive enterprise.

The great increase of value in city property and the increase in the erection of buildings in cities are no signs of general prosperity; but the reverse, as it indicates the absence of profitable employment for capital in industrial and productive pursuits, and its employment in the purchase and sale of city property, giving such property increased value. It is known that industrial and productive enterprises are carried on, if at all, with little or no profit, and as cities can only maintain their valuation by profitable business with the interior, it is clear that such apparently increased value has no solid foundation on which to rest.

By concentrating in the treasury in New York all government income, and individual and other deposits, and disbursing the same from day to day by loans and payment of government indebtedness, the equilibrium of the money market—interrupted by the withdrawal of money collected by taxes and retired into the treasury—will be restored; and the introduction of such government income into the money market in New York—where the rates of interest are correspondingly established for the whole country—will cause to flow from the treasury a steady and powerful stream of money, and so prevent a scarcity or too great abundance at any one time, and therefore of the employment of capital in speculation, as it is only on a scarcity, or an abundant money market at irregular times, that speculation thrives. Speculation is known to be greatest during the greatest fluctuations in the price of money.

The great object to be obtained by a condition of specie payment is the maintenance of a standard and uniform value in the capital employed by the people in their various operations; and as the accumulation of gold in the treasury acts as a forced check on the advance of the price of gold in the market, the same is rendered more or less ineffectual and fluctuating by the irregular flowing in and out of the treasury of the money received from the people in taxes.

The loans and the deposits aforesaid will strengthen the treasury by drawing from the banks and otherwise the money now used in speculation.

No operator or combination of operators engaged in speculation will be sufficiently powerful to check or hinder the more powerful movements of the treasury, and their capital, in the absence of speculative opportunities for investment, will seek the level of the rates of interest established for money by the treasury movements, which must gradually work lower and lower; and the capital taken from speculative investment will seek employment in the interior, in the industrial and productive pursuits of the people, such employment—when high rates of interest cease—being more profitable and safer.

By loans as aforesaid the government will derive a large income for the use of its unemployed funds, at least sufficient to pay for the management of the same, and nearly sufficient to pay the expenses of collecting the revenues, besides giving steadiness, greater abundance, and lower rates of interest to the money market.

41ST CONGRESS, 1st Session. | SENATE. | MIS. DOC. No. 18.

RESOLUTION

OF

THE LEGISLATURE OF MICHIGAN,

IN FAVOR OF

An appropriation for the completion of the harbor at the mouth of the Ontonagon river.

MARCH 29, 1869.—Referred to the Committee on Commerce and ordered to be printed.

JOINT RESOLUTION asking the Congress of the United States to make an appropriation for the completion of the harbor at the mouth of the Ontonagon river.

Whereas the south shore of Lake Superior, for a distance of 150 miles, has no accessible refuge for boats and vessels, and the mouth of the Ontonagon river, midway of such distance, is capable, by a moderate outlay, of being made an excellent harbor, and is the only point within such distance capable of being so made;

And whereas the necessities of commerce on such lake require that a safe and accessible harbor should be speedily constructed at such place;

And whereas the Congress of the United States, realizing the importance of such improvement, have appropriated a portion of the amount estimated by the government engineer necessary for the construction of the same;

And whereas, also, the amount already appropriated has been expended, and a further appropriation recommended by the engineers in charge, which further appropriation is necessary to meet the demands of the public, and to make useful the expenditure already incurred: Therefore, be it

Resolved by the senate and house of representatives of the State of Michigan, That the Congress of the United States be, and they hereby are, requested to make such appropriation for the harbor at the mouth of the Ontonagon river, in the upper peninsula of Michigan, as will be necessary to complete the work already begun by the general government; and that our senators in Congress be instructed, and our representatives requested to use all honorable efforts in securing such appropriation.

Resolved, That his excellency the governor be requested, to transmit copies of the foregoing preamble and resolution to each of our senators and representatives in Congress.

MORGAN BATES,
President of the Senate.
J. J. WOODMAN,
Speaker of the House of Representatives.

EXECUTIVE OFFICE, *Lansing, March* 17, 1869.

Approved:

HENRY P. BALDWIN.

41ST CONGRESS, 1st Session. | SENATE. | MIS. DOC. No. 19.

RESOLUTION

OF

THE LEGISLATURE OF SOUTH CAROLINA,

RATIFYING

The amendment to the Constitution of the United States known as Article XV.

MARCH 29, 1869.—Ordered to lie on the table and be printed.

JOINT RESOLUTION ratifying the 15th amendment to the Constitution of the United States of America.

Whereas both houses of the 40th Congress of the United States of America, at its third session, by a constitutional majority of two-thirds thereof, made the following proposition to amend the Constitution of the United States of America in the following words, to wit:

A RESOLUTION proposing an amendment to the Constitution of the United States.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, (two-thirds of both houses concurring,) That the following article be proposed to the legislatures of the several States as an amendment to the Constitution of the United States, which, when ratified by three-fourths of said legislatures, shall be valid as part of the Constitution, namely:

ARTICLE XV.

SECTION 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States, or by any State, on account of race, color, or previous condition of servitude.

SEC. 2. The Congress shall have power to enforce this article by appropriate legislation.

Therefore,

Be it resolved by the senate and house of representatives of the State of South Carolina, now met and sitting in general assembly, and by the authority of the same.

SECTION 1. That the said proposed amendment to the Constitution of the United States of America be, and the same is hereby, ratified by the general assembly of South Carolina.

SEC. 2. That certified copies of this preamble and joint resolution be forwarded by the governor of this State to the President of the United States, to the presiding officer of the United States Senate, and to the Speaker of the United States House of Representatives.

In the senate-house, the 15th day of March, in the year of our Lord one thousand eight hundred and sixty-nine.

CHAS. W. MONTGOMERY,
President of the Senate pro tempore.
FRANKLIN I. MOSES, Jr.,
Speaker House of Representatives.

Approved the 16th day of March, 1869.

[SEAL.] ROBERT K. SCOTT *Governor.*

EXECUTIVE DEPARTMENT, OFFICE SECRETARY OF STATE,
Columbia, South Carolina, March 20, 1869.

I, F. L. Cardozo, secretary of state of South Carolina, do hereby certify that this is a correct copy of a "joint resolution ratifying the 15th amendment to the Constitution of the United States of America," filed in this office.

Given under my hand and the seal of the State in Columbia, this 20th day of March, anno Domini 1869, and in the 93d year of the independence of the United States of America.

F. L. CARDOZO,
Secretary of State of South Carolina.

41ST CONGRESS, 1st Session. | SENATE. | MIS. DOC. No. 20.

RESOLUTION

OF

THE LEGISLATURE OF PENNSYLVANIA,

RATIFYING

The amendment to the Constitution of the United States known as Article XV.

MARCH 29, 1869.—Ordered to lie on the table and be printed.

JOINT RESOLUTION to ratify the amendment to the Constitution of the United States.

Whereas two-thirds of the members of the Senate and House of Representatives of the United States in Congress assembled did adopt an amendment to the Constitution of the United States which is entitled article 15, as follows:

"SECTION 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

"SEC. 2. The Congress shall have power to enforce this article by appropriate legislation."

Which said amendment has been submitted to the legislature of Pennsylvania for ratification or rejection: Therefore,

Be it resolved by the senate and house of representatives of the State of Pennsylvania in general assembly met, That the amendment as above proposed and submitted is hereby ratified and adopted by the State of Pennsylvania.

JOHN CLARK,
Speaker of the House of Representatives.
WILMER WORTHINGTON,
Speaker of the Senate.

Approved the 26th day of March, A. D. 1869.

JNO. W. GEARY.

OFFICE OF THE SECRETARY OF THE COMMONWEALTH,
Harrisburg, March 26, 1869.

PENNSYLVANIA, *ss*:

I do hereby certify that the foregoing and annexed is a full, true, and correct copy of the original joint resolution of the general assembly entitled "Joint resolution to ratify the amendment to the Constitution of the United States," as the same remains on file in this office.

In testimony whereof, I have hereunto set my hand and caused the seal of the secretary's office to be affixed, the day and year above written.

[SEAL.]

ISAAC B. GARA,
Deputy Secretary of the Commonwealth.

In the name and by the authority of the Commonwealth of Pennsylvania, John W. Geary, governor of the said Commonwealth.

To all to whom these presents shall come, sends greeting:

Know ye, that the attestation or certificate hereunto attached is in due form and made by the proper officer, and that Isaac B. Gara, whose name is subscribed thereto, was at the time of subscribing the same, and now is, deputy secretary of the Commonwealth, duly appointed and commissioned, and full faith and credit are due and ought to be given to his official acts accordingly.

Given under my hand and the great seal of the State, at Harrisburg, the 26th day of March, in the year of our Lord 1869, and of the Commonwealth the ninety-third.

[SEAL.]

JOHN W. GEARY,
Governor.

By the governor:

F. JORDAN,
Secretary of the Commonwealth.

41ST CONGRESS, 1st Session. } SENATE. { MIS. DOC. No. 21.

RESOLUTION

OF THE

LEGISLATURE OF MICHIGAN,

IN RELATION TO

Navigation between the United States and Canada.

APRIL 2, 1869.—Referred to the Committee on Commerce and ordered to be printed.

JOINT RESOLUTION relating to navigation between the United States and Canada.

Whereas the rapidly increasing commerce between the eastern States and the northwest is calling for more ample and cheaper transportation; and whereas, also, certain mutual privileges are now enjoyed by both Canada and the United States, touching navigation and transportation, which ought, on the part of the two countries, to be matured into rights; Therefore,

Resolved by the senate and house of representatives of the State of Michigan, That if, by treaty or otherwise, the free navigation of Canadian waters, and the use of the Canadian canals by the shipping of the United States, upon the same terms as by Canadian and British shipping, and the free transit by land of American merchandise across Canadian territory, can be secured in exchange for like privileges to Canadian shipping in our waters, and British and Canadian merchandise over our oil, our senators and representatives in Congress are urged to use their influence to bring about such an arrangement, and in such negotiation to secure, if possible, the construction of a ship canal, connecting the St. Lawrence with Lake Champlain; and that our government, in case the State of New York will consent thereto, offer in exchange therefor to enlarge the Champlain canal to the same proportions as that which shall connect the St. Lawrence and Lake Champlain, and allow the use thereof upon the same terms as are imposed upon American shipping.

Resolved, That the governor of this State be and is hereby requested to transmit copies of this joint resolution to our members of Congress.

MORGAN BATES,
President of the Senate.
J. J. WOODMAN,
Speaker of the House of Representatives.

EXECUTIVE OFFICE,
Lansing, March 24, 1869.

Approved:

HENRY P. BALDWIN.

41ST CONGRESS, 1st Session. } SENATE. { MIS. DOC. No. 22.

STATEMENT

PREPARED IN THE OFFICE OF INTERNAL REVENUE IN RELATION TO TAX ON MANUFACTURED TOBACCO.

APRIL 3, 1869.—Ordered to be printed, to accompany bill H. R. No. 140.

OFFICE OF INTERNAL REVENUE,
Washington, April 1, 1869.

SIR: I have examined as carefully as the limited time allowed me would permit those sections of "An act to amend an act entitled 'An act imposing taxes on distilled spirits and tobacco, and for other purposes,' approved July 20, 1868," which relate to tobacco, and beg leave to submit the following suggestions:

The amendment to section 67 provides for numbering in continued series for each collection district all stamps for tobacco and snuff in packages of one pound or more in weight, and for the written signature of the collector, when the same are sold by him.

The serial numbers would, I have no doubt, prove a great safeguard against the use of fraudulent stamps, and would aid in identifying tobacco and tracing it back to the manufacturer. It would, however, impose a great amount of labor upon the collectors in the manufacturing districts to require them when they make a sale of stamps to write their names on each stamp. In many districts manufacturers are located in places far remote from the collector, and many of them can only purchase stamps in small quantities and from time to time as they have occasion to use them. This renders it necessary that stamps should be intrusted with deputy collectors in order to accommodate manufacturers in these respects. In such cases the signatures of deputy collectors should be allowed, or the collectors should be allowed to sign the stamps at any time before sale, and not be obliged to do it "when sold."

Sections 2 and 3 provide for stamping tobacco on which tax has been paid and which is unstamped, manufactured prior to the 23d of November, 1868, and also for stamping tobacco, snuff, and cigars manufactured before the imposition of any tax or duty thereon; though in the latter case the purpose appears rather inferential than plain and explicit.

By the 2d section, 60 days from the date of the passage of the act are allowed for any person having in his possession tobacco, snuff, and cigars, to make a statement of the class, weight, and number of packages. Meanwhile, the law allows the sale of all descriptions of tobacco, except, smoking and fine-cut chewing, until the 1st of July, 1869.

It seems to me that from the date of the passage of this bill, the sale of all *unstamped* tobacco of every description should have been forbidden, as is now the sale of smoking tobacco, fine-cut chewing, snuff and cigars. Otherwise, it would be impossible to prevent various changes and manipulations of the stock on hand, so as to cover the largest amount possible with free stamps. Illicit tobacco, branded by some inspector Sugg or

Bilbro, and antedated, would be put upon the market, and by the aid of some assistant assessor with an easy conscience, or, without such aid, "proven" to the collector to be "tax-paid tobacco," and entitled to free stamps.

From the abstracts sent to this office by assessors of tobacco dealers' inventories, it appears that there was on hand of all descriptions:

Of tobacco and snuff, December 1, 1868.....
Of cigars, December 1, 1868.....
Of tobacco and snuff, January 1, 1869.....
Of cigars, January 1, 1869.....
Of tobacco and snuff, February 1, 1869.....
Of cigars, February 1, 1869.....

These quantities probably do not represent one-half of the real quantity of tobacco and snuff now on the market unstamped, or one-half of the number of cigars.

The law imposed no penalty for neglecting or refusing to make the inventories required by sections 78 and 94 of the act of July 20, 1868, consequently many dealers made no inventories, and those who made inventories generally made them as small as possible, fearing that all they reported as on hand and unstamped at the expiration of the time allowed for the sale of unstamped goods, they might have to purchase stamps for.

Beyond all doubt a large portion of this stock of tobacco, if not the larger portion, never paid any tax whatever. Much of it is held by persons who purchased at very low prices, subject to the contingency of having to put on tax-paid stamps unless Congress should see fit to give them free stamps. To stamp all this tobacco would be to put upon it the government's sanction and seal; and whether any tax had ever been paid upon it or not, henceforward it must pass current and unquestioned.

But this act contemplates only free stamps for such unstamped tobacco, snuff, and cigars as have been inventoried, and upon which the tax has been paid, and sworn testimony adduced to the collector to prove to his satisfaction that the tax has been paid, in addition to the proper inspection brands and marks thereon. Now, if any of this stock of tobacco or cigars is to have free stamps placed upon it by the government, it is very clear that all on which a tax has already been paid should be so stamped, and none other should be. Is it possible to stamp all that has paid tax and to stamp no other? I think not. I think the number of persons and firms in this country who deal in manufactured tobacco, snuff, or cigars, and who own portions of the unstamped stock now on hand, may safely be set down as not less than 100,000.

Every man of these 100,000 will claim that the stock he has on hand has paid the tax to which it was liable, while not one man in 10 could possibly furnish any evidence, aside from the inspection marks or brands thereon, that any tax had ever been paid; and not one internal revenue officer in 100, who might be called upon to examine the packages, could tell if the marks and brands were genuine or counterfeit. This must necessarily be so, as the goods are principally manufactured in a few States, and are shipped to every part of the country, and many of these goods are to-day in the hands of dealers who live hundreds, and even thousands of miles from the place where they were made or manufactured, and how are these men to produce sworn testimony to satisfy their collectors that the tax has been paid on the tobacco for which they ask stamps? A dealer of tobacco in New York, Philadelphia, Baltimore, Richmond, Cincinnati, Chicago, or any other large city where the tobacco is manufactured, could doubtless produce any proof that the law

required, in addition to the inspector's marks and brands; even sworn testimony that the 100 or the 500 barrels of smoking tobacco, or the 100 or the 500 caddies or boxes of plug tobacco which he holds, has all been inventoried and all paid tax; but it would be difficult to furnish such evidence in California or Oregon. It would be utterly impossible for nine out of every ten of all those who hold unstamped goods to furnish any evidence that tax had ever been paid beyond the evidence which the packages themselves bear, viz., the brands and stamps.

To stamp the larger lots of tobacco, snuff, and cigars, in the hands of jobbers, because they may be able to furnish the evidence which the law requires—and, it is to be feared, just as easily, and evidence just as conclusive, where no tax ever has been paid as where it has—while the smaller lots in the hands of dealers must be stamped by the owners themselves, and at their own expense, because, while every pound of tobacco and every box of cigars which they have on hand and which they have truly and correctly inventoried has previously paid a tax, they can show no evidence of the fact beyond the brands, marks, and stamps placed upon the packages by a government inspector, would be, as it seems to me, unjust and unequal; and instead of allaying and quieting the present clamor and feeling, it would tend greatly to increase both.

As already stated, the number of persons holding unstamped tobacco, snuff, or cigars, for whose relief this bill ostensibly provides, cannot be less than 100,000. In many of the rural districts, and scattered over large territories of country, there are two, three, and four hundred dealers in manufactured tobacco, and it may well be asked how in any reasonable time can it be possible to stamp this quantity of goods in the manner provided by this bill.

Stamps are to be issued by collectors to assistant assessors, upon written applications of the owners of the tobacco, snuff, or cigars, upon sworn testimony, in addition to the proper inspection brands or marks thereon, such as shall satisfy the collector that the tax has been paid. How is the collector to know that the goods have the *proper* inspection brands or marks thereon? Must he visit the premises of every applicant for stamps, and satisfy himself by personal inspection of each and every package? And how is he to procure sworn testimony? Shall he receive affidavits? If so, whose? If oral testimony, shall he summon witnesses before him? If so, whom? Must assistant assessors visit the places of business of every such dealer in his division, and examine every box, barrel, caddy, bladder, jar, or other package, and see that the proper inspection brands and marks have been placed upon them? Shall he weigh all these boxes, barrels, &c., &c., to ascertain the class, weight, and number of packages, and so make such a "careful and personal examination thereof," that he can verify under oath or affirmation the statement made by the dealer? It seems to me that this is just what the assistant assessor has got to do in every case, or he has got to take the naked statement of the dealer and give him credit as having the amount of goods reported in his last inventory, whether he has any such goods on hand at the time or not.

Then when the assistant assessor has completed all this labor, and the collector has become satisfied that the goods held by the applicant for stamps have paid the tax to which they were liable, and the requisite number and kinds of stamps have been delivered to the assistant assessor for stamping them, then it is made the duty of the assistant assessor to affix the stamps to the packages. For this purpose shall he again be required to make the circuit of his division, visiting the place

of business of every dealer who has been sufficiently fortunate to secure stamps; or shall the goods be brought to him?

As I view it, the obstacles in the way of stamping as proposed are so many and the amount of time, labor, and expense to the government involved is so great as to render the thing impracticable. To this add the fact that it will be next to impossible to stamp goods which have paid the tax, without at the same time stamping others that never paid any tax; also the fact that not one in ten of those who hold unstamped goods can possibly furnish such evidence as this bill contemplates; also the further fact that dealers in smoking tobacco, fine-cut chewing, and snuff have been more or less stamping these goods since the 15th of February, and are gradually becoming reconciled to it; and the further fact that a change in the mode of collecting tax from returns, assessments and collection to stamps could at no time be made without producing some apparent, and even real hardships; and the further fact that dealers have had knowledge that this change would require the stamping at some future time of all tobacco before being sold or offered for sale, and all have had since the 23d of November last to get rid of the stock on hand and prepare for the change; and it well may be doubted whether any change in the law of July 20, 1868, such as this bill proposes will not result in more detriment to the government than benefit to individuals; and whether the practical operations of this bill, if enacted into a law, will not create more disaffection and clamor than now exist.

(Prepared by Israel Kimball, head of division.)

Hon. C. DELANO,
Commissioner of Internal Revenue.

41ST CONGRESS, 1st Session. | SENATE. | MIS. DOC. No. 23.

MEMORIAL

OF

A. L. BOGART,

PRAYING

The introduction of Wilson's electric lighter over the Senate chamber.

APRIL 3, 1869.—Referred to the Committee on Public Buildings and Grounds.
APRIL 5, 1869.—Ordered to be printed.

To the honorable Senate of the United States:

The memorial of the subscriber respectfully showeth that your memorialist, having noticed in the proceedings of the Senate, March 25, 1869, the introduction of a resolution instructing the Committee on Public Buildings and Grounds to inquire into the expediency of removing the old carrier tubes over the Senate chamber and replacing them with new pipes, electric gas-burners, and lava-tips, to be lighted with electricity, the expense thereof not to exceed $6,300. And your memoralist fully believing that he is in possession of the most practical, durable, economical, and instantaneous method in use of lighting gas by electricity, viz, Wilson's electric gas-lighter, the only plan in which the *electric spark* is applied to such a purpose; your memorialist, therefore, in his own behalf, as owner of said invention, being desirous of at once introducing the same in lieu of the traveller-pipe now employed, would respectfully ask your attention to the following statement of the principles involved, viz, economy, durability, rapidity, and safety.

1st, Economy. The traveller-pipe now in use overlaying and igniting the service burners, containing over 7,000 jets, consumes in the performance of its office over 1,000 cubic feet of gas, a large portion of which escapes unburned, entailing an expense of not less than $3 20 each time employed. There is also a large escape of gas from the service burners, owing to the distance of the nipples of the traveller from them, requiring a full flow of gas before it comes in contact with the flame of said nipples, making a total expense, under the most favorable circumstances, of not less than $4 50 for each lighting. Whereas Wilson's method enables the operator to ignite the gas instantly on its emission from the pipes, however numerous the burners may be and however situated, thus absolutely preventing the escape of gas into the room, and, by preventing *all waste*, materially lessons the expense of gas. The only expense, therefore, will be the consumption of zinc and acid of a Smee battery of 12 cells for the few moments actually employed in lighting; the plates being so arranged as to be easily removed from the acid. The total cost of its maintenance will not exceed $5 per annum, and can be operated by any person of ordinary intelligence.

2d, Durability. The traveller-pipe requires, owing to the smallness of

the orifices of the jets, frequent picking, and often fail to ignite, thus requiring the constant readiness and frequent application of the torch, which is attended with danger, as evidenced by the recent accident in the hall of the House of Representatives. Wilson's lighter performs its office inevitably, there being no material of a destructible character in its paraphernalia, and, once applied, is lasting.

3d, Rapidity of lighting. The traveller-pipe, containing over 7,000 jets, necessarily requires much time in removing from one to the other; after all have lighted, much additional time is required for them to ignite the service burners. This time is rarely less than five minutes, often more. The traveller-jets having such small orifices are, from various causes, frequently tardy in their work, so much so as to require helping with a torch. The Wilson apparatus ignites the gas as soon as it begins to flow, the sparks of electricity being transmitted through the entire circuit many times each second, keeping pace with the flow of the gas. The ignition would be instantaneous, however, if the gas reached all of the burners at the same instant.

4th, Safety. This is the most vital principle of all, for any plan that renders danger probable, even in the remotest degree, should not be entertained for a moment. As there is a great escape of gas in the use of the traveller pipe, arising from a large number of burners being tardily lighted, and, as the lighting process is performed during sessions, the possibility of explosion is of the greatest importance, as, owing to the relative strength of ceiling and roof, the force of an explosion would probably precipitate the whole ceiling into the chamber below. It is a fact well known in chemistry that a highly explosive element is produced by an admixture of from 8 to 10 per cent. of coal gas with atmospheric air, therefore any plan necessitating such an escape for five minutes, in so confined a space as that in which the burners are located, would make an explosion not only possible but probable. Wilson's apparatus ignites the gas as soon as it begins to flow, thus *no gas* is permitted to escape unconsumed, and all danger is avoided.

In the same behalf your memorialist would respectfully refer to the resolution above indicated, with a view of setting forth the relative merits of Wilson's patent and the plan therein proposed known as Gardiner's patent, as now existing in other portions of the Capitol, doing no greater amount of work.

Gardiner's apparatus comprises a battery of 200 large cells, which are in constant consumption during the session of Congress, at great expense for acids, zinc, carbons, quicksilver, breakage of jars, &c., &c.

The igniting of the gas is done by a coil of platinum wire attached to each burner and heated by the *magnetic current* to a white heat. In no case can there be over 30 ignited at a time, thus causing more escape of gas in the process of lighting than under the present system.

The lighting of 1,050 burners (the number contained in the Senate) by Gardiner's plan would require 35 circuits, rendering it necessary to run an immense amount of wire, thus increasing the difficulty of securing perfect insulation. There was some four miles of wire used for this purpose in the dome of the Capitol.

The platinum wires, being exposed to an intense heat and chemical action during the entire burning of the gas, causing their decomposition, require frequent renewals, to an extent of not less than 10 per cent. of the whole number after each period of lighting, and, being about the same value as of gold, entails a large additional item of expense.

The giving out of these wires, which is only detected by a failure to do their office, renders it necessary to use the torch, while in the mean

time the gas is escaping into the room from this cause, and it being a more tardy plan than even the traveller-pipe, the danger of explosion is enhanced.

The nicety of the adjustment of these platinum wires renders them constantly liable to get out of order, however careful persons may be while dusting and cleaning, which is indispensible wherever they are located.

It is a slow method of lighting, not only on account of the small number that may be ignited at one time, but also from the fact that, while the air contained in the pipe is being expelled, the wires are being cooled, and until it escapes they will not ignite, thus requiring more time for lighting and greater escape of gas than by the present method.

These repairs and the care demanded by this large battery, requires the constant employment of an electrician and his assistant, both experts.

The following are the items of cost for maintaining and applying this apparatus during the fiscal year ending June, 1868, obtained from General Michler, Superintendent Public Buildings and Grounds, which it will be observed does not include the waste of gas during process of lighting, or while making frequent repairs, nor does it include the cost of acid used during that time, as sufficient was left over from the stock purchased during the previous year:

Oct. 10, 1867.—20 large glass battery jars, at $7		$140 00
100 amalgimated zinc plates, at $4		400 00
Repairing 80 carbon plates, at $1 50		45 00
24 8-inch ground glass globes, at $1 50		36 00
Cartage and expressage		5 30
Oct. 31, 1867.—1 flask quicksilver, 76½ lbs., at $1		76 50
50 lbs. insulated copper wire, at $3		150 00
500 brass binders, at 5 cents		25 00
1 pint platinum solution, 12 oz.		18 00
200 pipe clay insulators, at 25 cents		50 00
50 rubber insulators, at 25 cents		12 50
2 pair glass pliers, at $1 25		2 50
Express expenses		2 75
Freight and cartage		4 75
April 6, 1868.—16 oz. platina solution, at $1 50		24 00
25 platina tips, at $1 50		37 50
June 30, 1868.—Graduating glass		5 25
Total for material and repairs		1,035 05
Salary paid to electrician		1,200 00
Salary paid to assistant		1,095 00
Total		3,330 05

For the first half of the present fiscal year the expense foots up the sum of $2,425 99.

Your memorialist would respectfully submit that all of the difficulties which are sure, sooner or later, to arise in the use of the heated platina wire are overcome by adopting the electric spark generated by the inductive coil used in connection with a few small cups of Smee's battery, which constitutes Wilson's electric lighter. This arrangement will do the work of 200 cells, as now applied by Gardiner. The only part that can wear out is the battery; and as 200 pairs of plates, other things being equal, wear out just as soon as 12 pairs, by such a reduction in the number of plates used, and the time of their employment, the expense

of keeping a battery in operation, when once applied is almost annihilated. By this method, which *depends upon breaks in the circuit*, we also avoid the *extreme care* which is required in Gardiner's wire heating process. The least possible *break* under that process being sufficient to stop all action till the break is repaired, and these breaks are extremely liable to occur from an over-charged battery, inuniformity in the length, thickness, or quality of the wire to be heated, and also its constant destruction from chemical action.

Your memorialist would respectfully submit the following proposition for the introduction of Wilson's electric lighter over the Senate chamber:

I will engage to introduce an apparatus of the most approved and substantial character in every particular, capable of lighting the burners satisfactorily, to be constructed of the best materials, and in workmanlike manner, for the sum of $4,500.

As an evidence of the *stability* and *economy* of this apparatus, I beg leave to call your attention to the following testimonial, which is one of many of like character, furnished me by proprietors of buildings in which the Wilson lighter has been for years, and is now, in practical operation:

BOSTON, *February* 17, 1869.

DEAR SIR: We take pleasure in certifying that Wilson's electric gas-lighter has been used at the Boston theatre during the last three years, and has given perfect satisfaction. It has *never* failed to light the chandelier during the whole time, and continues to work in perfect order. During the whole time it has been in operation it has not required the expenditure of a dollar for repairs. By its use, besides other advantages, it has caused a great saving of time, labor, and gas.

F. O. PRINCE,
President of the corporation, in behalf of the directors.
J. B. BOOTH, *Manager.*

Mr. A. L. BOGART.

Hoping that the subject will meet with the prompt and favorable consideration of your honorable body, I subscribe myself very respectfully, yours,

A. L. BOGART,
No. 702 *Broadway, New York.*

41ST CONGRESS, 1st Session. } SENATE. { MIS. DOC. No. 24.

PETITION

OF

CITIZENS OF THE DISTRICT OF COLUMBIA,

PRAYING

The organization of a single local government of the District, under the provisions of a law of Congress, similar to that proposed in the bill generally known as the Morrill bill.

MARCH 26, 1869.—Referred to the Committee on the District of Columbia.
APRIL 7, 1869.—Ordered to be printed.

WASHINGTON, D. C., *March* 20, 1869.

SIR: At a public meeting of the citizens of the District of Columbia, held in Metzerott Hall, on the 17th day of January, 1868, there was a nearly unanimous expression of opinion in favor of a single local government of the District, under the provisions of a law of Congress, similar to that proposed in a bill introduced into the Senate several years ago, and generally known as the Morrill bill; and at the same meeting the undersigned were appointed a committee with instructions to draw up such changes in that bill and additions to it as they should deem requisite for the good government of the District, and then present it to Congress as so amended and urge its passage. Having fulfilled the first part of their instructions, the committee now beg leave to place the result of their labors before the honorable Committee on the District of Columbia of the Senate, and respectfully ask that the "Morrill bill," as amended by them, may receive the favorable consideration and action of your committee, with a view to its enactment into a law. The undersigned will esteem it a privilege if they, or a sub-committee of their body, should be permitted to be present when this bill is considered by your committee, and explain their views in relation to any of its parts or provisions which may at first seem to your committee either unnecessary or unwise.

We have the honor to be, sir, very respectfully, your obedient servants,

C. H. NICHOLS.
W. B. TODD.
H. D. COOKE.
GEO. W. RIGGS.
L. CLEPHANE.
ALEX. R. SHEPHERD.
WILLIAM H. PHILIP.
D. K. CARTTER.
J. M. LATTA.

Hon. HANNIBAL HAMLIN,
Chairman of the Committee on the District of Columbia,
United States Senate.

41ST CONGRESS, 1st Session. | SENATE. | MIS. DOC. No. 25.

RESOLUTION

OF

THE LEGISLATURE OF KANSAS,

IN FAVOR OF

The passage of the law authorizing the holding of a term of the circuit and district courts of the United States for the district of Kansas, at Leavenworth City in that State.

APRIL 8, 1869.—Referred to the Committee on the Judiciary and ordered to be printed.

SENATE CONCURRENT RESOLUTION NO. 45.

Be it resolved by the senate of the State of Kansas, (the house of representatives concurring,) 1. That the Congress of the United States be requested to pass a law authorizing and requiring the holding of at least one term in each year of the circuit and district courts of the United States for the district of Kansas, at Leavenworth City, Leavenworth county, Kansas: *Provided*, That no business shall be transacted at said term of court held at Leavenworth, except that which arises out of the county of Leavenworth.

2. *And be it further resolved*, That our senators and representatives in Congress be respectfully but urgently requested to use all honorable means to procure the immediate passage of such law.

3. *And be it further resolved*, That the secretary of state be and he is hereby requested to immediately transmit a copy of these resolutions to each of our senators and our representative in Congress.

Adopted by the senate, March 3, 1869.

GEORGE C. CROWTHER,
Secretary of Senate.

Concurred in by the house of representatives, March 3, 1869.

H. C. OLNEY, *Chief Clerk.*

I, Thomas Moonlight, secretary of state, do hereby certify that the foregoing is a true and correct copy of the original concurrent resolution filed in this office.

In testimony whereof I have subscribed my name and affixed the great seal of the State this 2d day of April, A. D. 1869.

[SEAL.]

THOMAS MOONLIGHT,
Secretary of State.